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ABSTRACT

This material provides students with information to prepare for a mock trial. The defendant in this case has been accused of the crime of driving under the influence of alcoholic beverages causing severe bodily injury. Case materials include stipulated facts, jury instructions, depositions, and other related materials. (EH)

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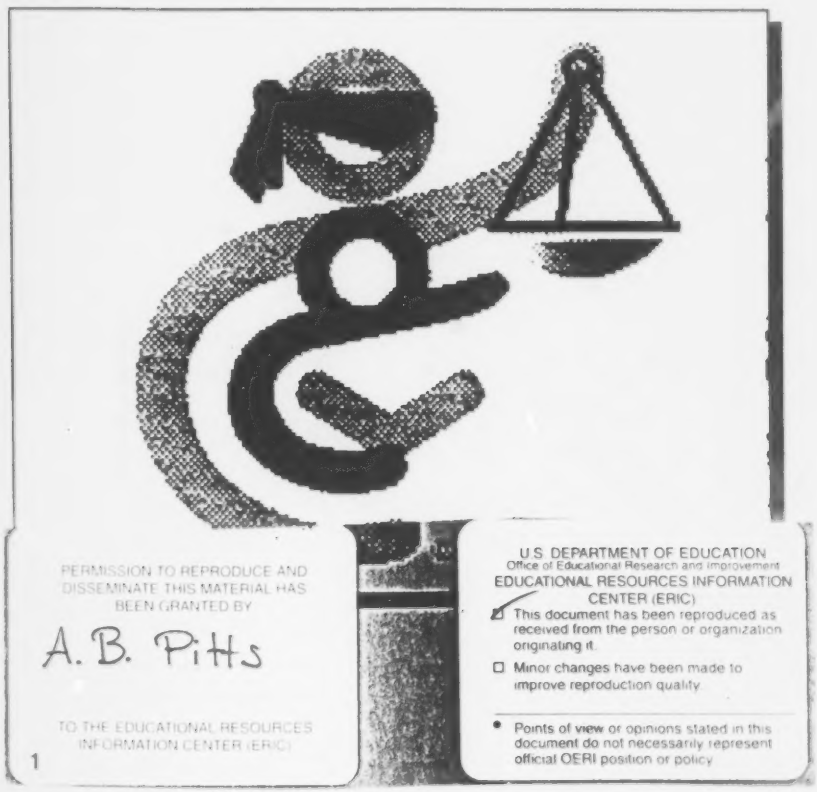
ED 435 559

THE FLORIDA LAW RELATED EDUCATION ASSOCIATION, INC.

PROUDLY PRESENTS

THE 1997 FLORIDA HIGH SCHOOL MOCK TRIAL COMPETITION CASE MATERIALS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SO 029 244

Funded with assistance from the Florida Bar Foundation Interest on Trust Accounts Program and The Florida Bar General Practice Section. Special Thanks to William Eble and Laurie Chane, Eble and Chane, P.A.

BEST COPY AVAILABLE

State of Florida

V.

Lee Appleman

The Florida Law Related Education Association, Inc.

Questions should be submitted in writing and mailed or faxed to:

The Florida Law Related Education Association, Inc.
1625 Metropolitan Circle, Suite B
Tallahassee, FL 32308
904-386-8223
904-386-8292
E-mail: ABPflreaED@aol.com

This year's defendant has been accused of the crime of Driving Under the Influence of Alcoholic Beverages Causing Severe Bodily Injury. Case materials include stipulated facts, jury instructions, depositions, and other related materials.

Special Thanks to William Eble and Laurie Chane, Chane and Eble, P.A. and members of The Florida Bar Law Related Education Committee, for developing this year's case.

The views or opinions expressed within these materials do not necessarily represent those of the sponsoring or co-sponsoring organizations, the case authors, or mock trial volunteers or participants.

TRIAL OVERVIEW

I. **Presiding Judge will ask each side if they are ready for trial. Team rosters/roles should be presented to the judges.**

II. **Presiding Judge announces that all witnesses are assumed to be sworn.**

III. **Opening Statements - no objections allowed; however, *after* each opening has concluded, the opposing counsel may raise his/her hand to be recognized and state that if they could have objected - they would have objected to...The presiding judge does NOT need to rule on this. No rebuttals allowed. (RE-9)**

IV. **Cases presented. Page CR-6 lists the trial sequence and time limitations.**

V. **Presiding judge will ask prosecution if they would like to call one rebuttal witness. The defense may cross examine the prosecution's rebuttal witness. The defense may not call a rebuttal witness. See new competition rules.**

VI. **Closing Statements - no objections allowed; however, *after* each closing has concluded, the opposing counsel may raise his/her hand to be recognized and state that if they could have objected - they would have objected to...The presiding judge does NOT need to rule on this. In this year's case, the prosecution is allowed to call one rebuttal witness. The defense will have the opportunity to cross examine the rebuttal witness. The defense will NOT be allowed to call a rebuttal witness. (RE-9)**

VII. **No jury instructions need to be read at the conclusion of the trial.**

VIII. **Judges should complete scoresheets *BEFORE* debriefing.**

IX. **If a material rules violation is entered, scoring judges should exit the courtroom but stay in the vicinity. Scoring judges will return to the courtroom to determine if the presiding judge feels the dispute may be considered in scoring. Specific forms needed. CR-8 Dispute Settlement.**

X. **ALL DECISIONS OF THE JUDGES ARE *FINAL*.**

XI. **Debrief/Critique - DO NOT ANNOUNCE SCORES OR PERFORMANCE DECISIONS.**

Bench brief will be provided.

STIPULATED FACTS

On June 29, 1996, Lee Appleman attended a graduation party at the home of a classmate, Terry Wilson. When the party was over, Lee and two friends headed home in Lee's graduation present, a new blue mustang. On a clear summer night, the bright futures of Lee Appleton and Francis Blameless changed forever. The question you will be deciding is whether Lee Appleman violated Section 316.193(3)(c)(2) of the Florida Statutes which makes it a third degree felony punishable by up to five (5) years imprisonment in the Department of Corrections to operate a motor vehicle while under the influence of alcoholic beverages or controlled substances and cause serious bodily injury.

When Lee's vehicle flipped over, Fran was ejected from the front passenger seat. Fran was not wearing a seat belt. Fran sustained a spinal column injury resulting in irreversible paralysis from the waist down. Fran also suffered a severe concussion in the accident which caused partial amnesia. Fran has no memory of the events of June 29 or June 30, 1996. Lee suffered a compound fracture of the right forearm but has since fully recovered. Lee and Fran have not spoken to each other since the accident. Neither has attempted to contact the other.

Both Lee and Fran had been accepted to college, but the accident and subsequent criminal charge against Lee caused both to modify their plans. Fran attends the local community college. Lee's university study in criminal justice and anticipated career in law enforcement awaits the outcome of the trial. Even with an acquittal, Lee recognizes that law enforcement is most likely out of the question. Since the accident, Lee has been treated by a local psychologist for depression and has remained unemployed.

The accident was investigated by Highway Patrol Trooper Dale Broadside. Based upon probable cause developed through the investigation and interviews of witnesses at the accident scene, Broadside requested that the hospital obtain a blood sample from Lee for alcohol analysis. The sample was lawfully obtained by a licensed practical nurse at Sunshine Community Hospital according to Section 316.1933(2)(a) Florida Statutes. The blood sample was given to Trooper Broadside on June 30, 1996. Trooper Broadside left the sample in the trunk of the patrol vehicle which was parked in a treeless back yard until Trooper Broadside returned to work on Tuesday, July 02, 1996. On July 02, 1996, Trooper Broadside placed

the test kit into a refrigerator until it was mailed to the Florida Department of Law Enforcement Lab in Tampa, Florida.

The sample was tested by Leslie Lee in accordance with the methods approved by The Department of Law Enforcement and Section 316.1933(2)(b) Florida Statutes. Leslie Lee does possess a valid permit issued by the department for purposes of conducting blood alcohol tests. Leslie Lee's testing procedure, results, and expert opinions are contained in a deposition in this packet. The results of the test were .06 grams of alcohol per 100 milliliters of blood.

The chain of custody of the blood sample is not in dispute. It is stipulated that the blood which Leslie Lee tested is in fact the blood sample drawn from Lee Appleman by a licensed practical nurse. Appleman's attorney, William Pebble, filed a motion to suppress the blood results based upon lack of probable cause as well as contamination by coagulation of the sample. The motions were denied by the trial court. The trial judge found that the Trooper had probable cause to request the blood sample and that the handling of the sample by the trooper went to the weight of the evidence, not the admissibility.

Appleman's attorney also filed a motion to suppress statements alleging that the statements were not freely and voluntarily made in light of Appleman's medical condition at the time they were given, obtained in violation of the accident report privilege, and obtained in violation of Appleman's 5th and 6th Amendment rights to counsel. The trial court denied Appleman's motion to suppress finding that the statements were freely and voluntarily made, that Appleman's statement "It's all my fault." was not the result of interrogation and therefore did not violate the 5th or 6th Amendment's to the Constitution, and that the officer sufficiently put Appleton on notice that the investigation had shifted from an accident to a criminal investigation by the reading of Miranda.

Lee Appleman's vehicle, including tire pressure, was in perfect operating condition prior to the crash. An examination of the vehicle by state and defense experts revealed that there was no mechanical failure which attributed to the crash.

The following facts, conclusions and rules govern the competition and may be relied upon by both parties in the presentation of the case and may not be controverted.

A. All pertinent Miranda rights were validly waived on all

statements.

B. All exhibits were obtained in conformity with all pertinent search and seizure requirements.

C. Chain of custody is proper with respect to exhibits.

D. All signature on witness statements and other documents are presumed to be signed by the named individual and are authentic.

E. The arrest and disposition records are those of the person whose name appears thereon and are records of regularly conducted business activities made at or near the time the matters recorded occurred, by someone with personal knowledge or from information submitted by someone with such knowledge of the materials recorded.

F. The information given in the Stipulated Facts is true and correct.

G. The information and jury instructions are accurate in all respects.

H. The judges will not actually read the jury instructions aloud during the competition. The instructions are included in this packet to provide the teams with the applicable law which would actually be read if an actual jury were deciding the case. Closing arguments should integrate the evidence adduced from the witnesses with the law set forth in the instructions into a persuasive summarization of the merits of the case.

I. There are no additional arrest or incident reports or criminal records other than those contained in the packet.

J. Six witnesses shall testify: three for the state and three for the defense. Subject to evidentiary procedural requirements, each side may select the sequence of its witnesses. At the State's option, one (1) witness may be selected for rebuttal testimony. That witness must be announced to the presiding judge before the rebuttal testimony is presented. After the defense rests, the rebuttal witness shall be called to the stand for one minute of direct testimony and one minute of cross-examination. No rebuttal witness may be called by the defense.

1. The State:
   a. TROOPER DALE BROADSIDE
   b. LESLIE LEE
   c. PAT CLEMENTZ

2. The defense:
   a. Defendant - LEE APPLEMAN
   b. JODY RIDER
   c. TERRY WILSON

INFORMATION

IN THE CIRCUIT COURT FOR THE SIXTIETH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR SUNSHINE COUNTY

FALL TERM, 1996

FELONY INFORMATION

CRC96-9721CFAES

STATE OF FLORIDA

VS.

LEE APPLEMAN

DRIVING UNDER THE INFLUENCE OF ALCOHOLIC BEVERAGES OR CONTROLLED SUBSTANCES, 3F

IN THE NAME AND BY THE AUTHORITY FOR THE STATE OF FLORIDA:

HENRY McCABE, State Attorney for the Sixtieth Judicial Circuit of Florida, in and for Sunshine County, prosecuting for the State of Florida, in the said County, under oath. Information makes that:

LEE APPLEMAN

in the County of Sunshine and State of Florida, on the 30th day of June, in the year of our Lord, one thousand nine hundred ninety-six, in the County and State aforesaid did then and there drive or be in actual physical control of a vehicle while under the influence of alcoholic beverages, model glue, or any substance controlled under Chapter 893, Florida Statutes, and was affected to the extent that LEE APPLEMAN's normal faculties were impaired or had a blood alcohol level of 0.08 percent or higher and as a result of operation of the vehicle caused serious bodily injury to another person; contrary to Chapter 316.193(3)(c)(2), Florida Statutes, and against the peace and dignity of the State of Florida.

STATE OF FLORIDA
SUNSHINE COUNTY

Personally appeared before me HENRY McCABE, the undersigned State Attorney for the Sixtieth Judicial Circuit of Florida, in and for Sunshine County, or his duly designated Assistant State Attorney, who being first duly sworn, says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true, and which if true, would constitute the offense therein charged; hence this information is filed in good faith in instituting this prosecution; and that he has received testimony under oath from the material witness or witnesses for the offense.

_____

Assistant State Attorney
for the Sixtieth Judicial Circuit
of the State of Florida,
Prosecuting for said State

Sworn to and subscribed before me this
_____ day of_____, 199__.

_____

Notary Public - State of Florida
Commission No. _____
My commission expires:

___ Personally known to me.

IN THE CIRCUIT COURT OF THE SIXTIETH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR SUNSHINE COUNTY

STATE OF FLORIDA

vs.

9609721CFAES

LEE APPLEMAN

WITNESS LIST

The State hereby lists the following witnesses known to the State Attorney to have information pertaining to the above-styled case, pursusant to Rule 3.220, Florida Rules of Criminal Procdure:

TROOPER BROADSIDE, Highway Patrol Station, 37 High Lane, Hope City, FL 33333

PAT CLEMENTZ, 32440 Clementz Rd., Hope City, FL 33333

LESLIE LEE, 47 Fork Road, Tallahassee, FL 33456

And any and all witnesses now or hereafter listed by the State Attorney in response to the Defendant's Demand for Discovery.

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the State Attorney, Courthouse, Sunshine County, Florida, by personal service this 7 day of October, 1996.

Jamie R Chase

Attorney at Law
Florida Bar Number: for
STATE ATTORNEY, SIXTIETH JUDICIAL CIRCUIT

IN THE CIRCUIT COURT OF THE SIXTIETH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR SUNSHINE COUNTY

STATE OF FLORIDA

vs.

9609721CFAES

LEE APPLEMAN

RECIPROCAL WITNESS LIST

Defendant submits the following Reciprocal Witness List pursuant to 3.220, Florida Rule of Criminal Procedure:

JODY RIDER, 22 Circle Road, Hope City, FL 33333

TERRY WILSON, 671 Funtimes Blvd., Hope City, FL 33333

And any and all witnesses now or hereafter listed by the State Attorney in response to the Defendant's Demand for Discovery.

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the State Attorney, Courthouse, Sunshine County, Florida, by personal service this 07th day of October, 1996.

Attorney at Law
Florida Bar Number: for
PUBLIC DEFENDER, SIXTIETH JUDICIAL CIRCUIT

2.01 INTRODUCTION TO FINAL INSTRUCTIONS

Members of the jury, I thank you for your attention during this trial. Please pay attention to the instructions I am about to give you.

2.02 STATEMENT OF CHARGE

LEE APPLEMAN, the defendant in this case, has been accused of the crime of Driving Under the Influence of Alcoholic Beverages or Controlled Substances Causing Serious Bodily Injury.

FELONY DUI - SERIOUS BODILY INJURY
F.S. 316.193(3)(c)2

Before you can find the defendant guilty of DUI with serious bodily injury, the State must prove the following three elements beyond a reasonable doubt:

1. LEE APPLEMAN drove or was in actual physical control of a vehicle.
2. While driving or in control of the vehicle, LEE APPLEMAN
   a. was under the influence of alcoholic beverages to the extent that LEE APPLEMAN'S normal faculties were impaired, or
   b. had a blood alcohol level of 0.08 percent or higher.
3. As a result LEE APPLEMAN caused serious bodily injury to FRANCIS BLAMELESS.

"Vehicle" is any device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.

"Normal faculties" mean those faculties of a person, such

as the ability to see, hear, walk, talk, make judgments, and, in general, to normally perform the many mental and physical acts of our daily lives.

"Serious bodily injury" means a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Note to Judge: In appropriate cases, an instruction may be given on one or more of the presumptions of impairment established by F.S. 316.1934(2)(a), (2)(b), and (2)(c), as follows: (

2)(a). If you find from the evidence that the defendant had a blood or breath alcohol level of 0.05 percent or less, you shall presume that the defendant was not under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

(2)(b). If you find from the evidence that the defendant had a blood or breath alcohol level in excess of 0.05 percent but less than 0.08 percent, you may consider that evidence with other competent evidence in determining whether the defendant was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired; or,

(2)(c). If you find from the evidence that the defendant had a blood or breath alcohol level of 0.08 percent or more, that evidence would be sufficient by itself to establish that the defendant was under the

influence of alcohol to the extent that his or her normal faculties were impaired. However, such evidence may be contradicted or rebutted by other evidence.

These presumptions may be considered along with any other evidence presented in deciding whether the defendant was under the influence of alcoholic beverages to the extent that his or her normal faculties were impaired.

2.02(a) WHEN THERE ARE LESSER INCLUDED CRIMES OR ATTEMPTS

In considering the evidence, you should consider the possibility that although the evidence may not convince you that the defendant committed the main crime[s] of which he is accused, there may be evidence that he committed other acts that would constitute a lesser included crime. Therefore, if you decide that the main accusation has not been proved beyond a reasonable doubt, you will next need to decide if the defendant is guilty of any lesser included crime. The lesser crimes indicated in the definition of (crime charged) are:

Driving Under the Influence.

The elements for Driving Under the Influence are the same as elements (1) and (2) above. The difference is that the state need not prove the element of serious bodily injury.

2.03 PLEA OF NOT GUILTY; REASONABLE DOUBT; AND BURDEN OF PROOF

The defendant has entered a plea of not guilty. This means you must presume or believe the defendant is innocent. The presumption stays with the defendant as to each material

allegation in the information through each stage of the trial until it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.

To overcome the defendant's presumption of innocence the State has the burden of proving the following two elements:

1. The crime with which the defendant is charged was committed.

2. The defendant is the person who committed the crime.

The Defendant is not required to prove anything.

Whenever the words "reasonable doubt" are used you must consider the following:

> A reasonable doubt is not a possible doubt, a speculative, imaginary or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt. On the other hand, if, after carefully considering, comparing and weighing all the evidence, there is not an abiding conviction of guilt, or, if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the charge is not proved beyond every reasonable doubt and you must find the defendant not guilty because the doubt is reasonable. It is to the evidence introduced upon this trial, and to it alone, that you are to look for that proof.

A reasonable doubt as to the guilt of the defendant may arise from the evidence, conflict in the evidence or the lack of evidence.

If you have a reasonable doubt, you should find the

defendant not guilty. If you have no reasonable doubt, you should find the defendant guilty.

2.04 WEIGHING THE EVIDENCE

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence, and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable, or less reliable than other evidence.

You should consider how the witnesses acted, as well as what they said. Some things you should consider are:

1. Did the witness seem to have an opportunity to see and know the things about which the witness testified?
2. Did the witness seem to have an accurate memory?
3. Was the witness honest and straightforward in answering the attorneys' questions?
4. Did the witness have some interest in how the case should be decided?
5. Does the witness' testimony agree with the other testimony and other evidence in the case?
6. Has the witness been offered or received any money, preferred treatment or other benefit in order to get the witness to testify?
7. Had any pressure or threat been used against the witness that affected the truth of the witness' testimony?
8. Did the witness at some other time make a statement that is inconsistent with the testimony he gave in

court?

9. Was it proved that the witness had been convicted of a crime?

10. Was it proved that the general reputation of the witness for telling the truth and being honest was bad?

You may rely upon your own conclusion about the witness. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

2.04(a) EXPERT WITNESSES

Expert witnesses are like other witnesses, with one exception - the law permits an expert witness to give his/her opinion.

However, an expert's opinion is only reliable when given on a subject about which you believe him/her to be an expert.

Like other witnesses, you may believe or disbelieve all or any part of an expert's testimony.

2.04(c) DEFENDANT TESTIFYING

The defendant in this case has become a witness. You should apply the same rules to consideration of his/her testimony that you apply to the testimony of the other witnesses.

2.04(e) DEFENDANT'S STATEMENTS

A statement claimed to have been made by the defendant outside of court has been placed before you. Such a statement should always be considered with caution and be weighed with great care to make certain it was freely and voluntarily made.

Therefore, you must determine from the evidence that the

defendant's alleged statement was knowingly, voluntarily and freely made.

In making this determination, you should consider the total circumstances, including but not limited to:

1. Whether, when the defendant made the statement, he/she had been threatened in order to get him/her to make it, and

2. Whether anyone had promised him/her anything in order to get him/her to make it. If you conclude the defendant's out of court statement was not freely and voluntarily made, you should disregard it.

2.05 RULES FOR DELIBERATION

These are some general rules that apply to your discussion. You must follow these rules in order to return a lawful verdict:

1. You must follow the law as it is set out in these instructions. If you fail to follow the law, your verdict will be a miscarriage of justice. There is no reason for failing to follow the law in this case. All of us are depending upon you to make a wise and legal decision in this matter.

2. This case must be decided only upon the evidence that you have heard from the answers of the witness [and have seen in the form of the exhibits in evidence] and these instructions.

3. This case must not be decided for or against anyone because you feel sorry for anyone, or are angry at anyone.

4. Remember, the lawyers are not on trial. Your feelings about them should not influence your decision in this case.

5. Your duty is to determine if the defendant is guilty or not guilty, in accord with the law. It is thejudge's job to determine what a proper sentence would be if the defendant is guilty.

6. Whatever verdict you render must be unanimous, that is, each juror must agree to the same verdict.

7. It is entirely proper for a lawyer to talk to a witness about what testimony the witness would give if called to the courtroom. The witness should not be discredited by talking to a lawyer about his testimony.

8. Feelings of prejudice, bias or sympathy are not legally reasonable doubts and they should not be discussed by any of you in any way. Your verdict must be based on your views of the evidence, and on the law contained in these instructions.

2.07 CAUTIONARY INSTRUCTION

Deciding a verdict is exclusively your job. I cannot participate in that decision in any way. Please disregard anything I may have said or done that made you think I preferred one verdict over another.

2.09 SUBMITTING CASE TO JURY

In just a few moments you will be taken to the jury room by the bailiff. The first thing you should do is elect a foreman.

The foreman presides over your deliberations, like a chairman of a meeting. It is the foreman's job to sign and date the verdict form when all of you have agreed on a verdict in this case. The foreman will bring the verdict back to the courtroom when you return. Either a man or a woman may be foreman of a jury.

Your verdict finding the defendant either guilty or not guilty must be unanimous. The verdict must be the verdict of each juror, as well as of the jury as a whole.

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your verdict. There are no other laws that apply to this case. Even if you do not like the laws that must be applied, you must use them. For two centuries we have agreed to a constitution and to live by the law. No one of us has the right to violate rules we all share.

FLORIDA TRAFFIC CRASH REPORT

☒ LONG FORM ☐ SHORT FORM

DO NOT WRITE IN THIS SPACE

MAIL TO: DEPT. OF HIGHWAY SAFETY & MOTOR VEHICLES
TRAFFIC CRASH RECORDS
TALLAHASSEE, FLORIDA 32399-0500

Time & Location

DATE OF CRASH	TIME OF CRASH	TIME OFFICER NOTIFIED	TIME OFF. ARRIVED	INVEST. AGENCY REPORT NUMBER	HSMV CRASH REPORT NUMBER
06/30/96	12:06 ☒AM ☐PM	12:37 ☒AM ☐PM	12:57 ☒AM ☐PM	0805540820 53	52331700

COUNTY CITY CODE	Feet or Miles	N S E W of	CITY OR TOWN (Check if in City or Town)	COUNTY
99/00	4.3	☒ ☐ ☐ ☐	HOPE City	☐ SUNSHINE

AT NODE NO	FEET MILES FROM NODE NO	NEXT NODE NO	NO. OF LANES	1 DIVIDED 2 UNDIVIDED	ON STREET, ROAD OR HIGHWAY
N/A	☐ 1 ☐ 2 N/A	N/A	2	2	SHATTERED DREAMS ROAD

AT INTERSECTION OF	FEET / MILES	N S E W	OF INTERSECTION OF
	.5 ☐ 1 ☒ 2	☐ ☐ ☒ ☐	C+Y RD 42

Section 1

Vehicle

DRIVER ACTION 1 Phantom 2 Hit & Run 3 N/A	YEAR	MAKE	TYPE	USE	VEH. LICENSE NUMBER	STATE	VEHICLE IDENTIFICATION NUMBER	POINT OF IMPACT CIRCLE AREA OF DAMAGE
3	95	FORD	01	01	WKE001	FL	2HIFQ22P0R2162758	19

TRAILER OR TOWED VEHICLE INFORMATION			TRAILER TYPE			
	N/A	N/A	N/A	N/A	N/A	N/A

VEHICLE TRAVELING N S E W	ON	AT	Est MPH	Posted Speed	EST. VEHICLE DAMAGE 1 Disabling 2 Functional 3 No Damage	EST. TRAILER DAMAGE
☒ ☐ ☐ ☐	Shattered Dreams	50+	25	$14,000	1	$N/A

INSURANCE COMPANY (LIABILITY OR PIP)	POLICY NUMBER	VEHICLE REMOVED BY	1 Tow Rotation List 2 Tow Owner's Request 3 Driver 4 Other
UNKNOWN		WRECKS R US	1

OWNER'S FULL NAME (Check if Driver)	CURRENT ADDRESS (Number and Street)	CITY AND STATE	ZIP CODE
☒ SAME AS DRIVER			

OWNER'S FULL NAME (Trailer or Towed Vehicle)	CURRENT ADDRESS (Number and Street)	CITY AND STATE	ZIP CODE
☐			

Pedestrian

DRIVER (Exactly as on Driver License) / Pedestrian	CURRENT ADDRESS (Number and Street)	CITY & STATE / ZIP CODE	DATE OF BIRTH
LEE APPLEMAN	37247 ORANGE VIEW LANE	HOPE City, FL 33333	10/03/77

DRIVER LICENSE NUMBER	STATE	DL TYPE	REQ END	BAC TEST 1 Blood 2 Breath 3 Urine 4 Refused 5 None	RESULTS %	AL. DRUG	PHYS. DEF	RES	RACE	SEX	INJ.	S. EQUIP.	EJECT.
A140-931-77-2650	FL	5	2	1	AEND	05	01	01			03	2 N/A	1

HAZARDOUS MATERIALS BEING TRANSPORTED 1 Yes 2 No	PLACARDED 1 Yes 2 No	RECOMMEND RE-EXAM 1 Yes 2 No	If YES, Explain in Narrative	DRIVER'S PHONE NO
☐ ☒	☐ ☒	☐ ☒		UNKNOWN

PASSENGER'S NAME (Additional on Continuation Page)	CURRENT ADDRESS	CITY & STATE / ZIP	AGE	LOC	INJ.	S. EQUIP.	EJECT.
FRANCIS Blameless	72796 JETTON PLACE	HOPE City, FL 33333	UK	3	4	1 N/A	2

Section 2

Vehicle

DRIVER ACTION 1 Phantom 2 Hit & Run 3 N/A	YEAR	MAKE	TYPE	USE	VEH. LICENSE NUMBER	STATE	VEHICLE IDENTIFICATION NUMBER	POINT OF IMPACT CIRCLE AREA OF DAMAGE
☐								☐

TRAILER OR TOWED VEHICLE INFORMATION			TRAILER TYPE			

VEHICLE TRAVELING N S E W	ON	AT	Est MPH	Posted Speed	EST. VEHICLE DAMAGE 1 Disabling 2 Functional 3 No Damage	EST. TRAILER DAMAGE
☐ ☐ ☐ ☐					$	☐ $

INSURANCE COMPANY (LIABILITY OR PIP)	POLICY NUMBER	VEHICLE REMOVED BY	1 Tow Rotation List 2 Tow Owner's Request 3 Driver 4 Other
			☐

OWNER'S FULL NAME (Check if Driver)	CURRENT ADDRESS (Number and Street)	CITY AND STATE	ZIP CODE
☐			

OWNER'S FULL NAME (Trailer or Towed Vehicle)	CURRENT ADDRESS (Number and Street)	CITY AND STATE	ZIP CODE
☐			

Pedestrian

DRIVER (Exactly as on Driver License) / Pedestrian	CURRENT ADDRESS (Number and Street)	CITY & STATE / ZIP CODE	DATE OF BIRTH

DRIVER LICENSE NUMBER	STATE	DL TYPE	REQ END	BAC TEST 1 Blood 2 Breath 3 Urine 4 Refused 5 None	RESULTS %	AL. DRUG	PHYS. DEF	RES	RACE	SEX	INJ.	S. EQUIP.	EJECT.

HAZARDOUS MATERIALS BEING TRANSPORTED 1 Yes 2 No	PLACARDED 1 Yes 2 No	RECOMMEND RE-EXAM 1 Yes 2 No	If YES, Explain in Narrative	DRIVER'S PHONE NO
☐ ☐	☐ ☐	☐ ☐		

PASSENGER'S NAME (Additional on Continuation Page)	CURRENT ADDRESS	CITY & STATE / ZIP	AGE	LOC	INJ.	S. EQUIP.	EJECT.

Code Information

VEHICLE TYPE
01 Automobile
02 Passenger Van
03 Pickup/Light Truck (2 rear tires)
04 Medium Truck (4 rear tires)
05 Heavy Truck (2 or more rear axles)
06 Truck Tractor (CAB)
07 Motor Home (RV)
08 Bus
09 Bicycle
10 Motorcycle
11 Moped
12 All Terrain Vehicle
13 Train
77 Other

VEHICLE USE
01 Private Transportation
02 Commercial Passengers
03 Commercial Cargo
04 Public Transportation
05 Public School Bus
06 Private School Bus
07 Ambulance
08 Law Enforcement
09 Fire/Rescue
10 Military
11 Other Government
77 Other

TRAILER TYPE
01 Single Semi Trailer
02 Tandem Semi Trailer(s)
03 Tank Trailer
04 Saddle Mount / Flatbed
05 Boat Trailer
06 Utility Trailer
07 House Trailer
08 Pole Trailer
09 Towed Vehicle
77 Other

RESIDENCE (Driver Only)
1 County of Crash
2 Elsewhere in State
3 Non-Resident of State
4 Foreign 5 Unknown

DL TYPE
1 A 2 B 3 C
4 D/Chauffeur
5 E/Operator
6 E/Oper-Rest
7 None

RACE
1 White
2 Black
3 Hispanic
4 Other

REQUIRED ENDORSEMENTS
1 Yes 2 No 3 NR

SEX
1 Male
2 Female

PHYSICAL DEFECTS
1 No Defects Known
2 Eyesight Defect
3 Fatigue / Asleep
4 Hearing Defect
5 Illness
6 Seizure, Epilepsy, Blackout
7 Other Physical Defect

INJURY SEVERITY
1 None
2 Possible
3 Non-Incapacitating
4 Incapacitating
5 Fatal (Within 90 Days)
6 Non-Traffic Fatality

ALCOHOL / DRUG USE
1 Not Drinking or Using Drugs
2 Alcohol - Under Influence
3 Drugs - Under Influence
4 Alcohol & Drugs - Under Influence
5 Had Been Drinking
6 Pending BAC Test Result

SAFETY EQUIPMENT IN USE
1 Not In Use
2 Seat Belt / Shoulder Harness
3 Child Restraint
4 Air Bag
5 Safety Helmet
6 Eye Protection

LOCATION In Vehicle
1 Front Left
2 Front Center
3 Front Right
4 Rear Left
5 Rear Center
6 Rear Right
7 In Body of Truck
8 Bus Passenger
9 Other

EJECTED
1 No
2 Yes
3 Partial

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Section 3

Vehicle

DRIVER ACTION: 1 Phantom 2 Hit & Run 3 N A

YEAR	MAKE	TYPE	USE	VEH. LICENSE NUMBER	STATE	VEHICLE IDENTIFICATION NUMBER

TRAILER OR TOWED VEHICLE INFORMATION

		TRAILER TYPE			

POINT OF IMPACT: CIRCLE AREA OF DAMAGE

18 Undercarriage 19 Overturn 20 Windshield 21 Fire 22 Trailer

VEHICLE TRAVELING: N S E W | ON | At | Est. MPH | Posted Speed | EST. VEHICLE DAMAGE $ (1 Disabling 2 Functional 3 No Damage) | EST. TRAILER DAMAGE $

INSURANCE COMPANY (LIABILITY OR PIP) | POLICY NUMBER | VEHICLE REMOVED BY (1 Tow Rotation List 2 Tow Owner's Request 3 Driver 4 Other)

Pedestrian

OWNER'S FULL NAME (Check if Driver) | CURRENT ADDRESS (Number and Street) | CITY AND STATE | ZIP CODE

OWNER'S FULL NAME (Trailer or Towed Vehicle) | CURRENT ADDRESS (Number and Street) | CITY AND STATE | ZIP CODE

DRIVER (Exactly as on Driver License) / Pedestrian | CURRENT ADDRESS (Number and Street) | CITY & STATE / ZIP CODE | DATE OF BIRTH

DRIVER LICENSE NUMBER	STATE	DL TYPE	REQ END	BAC TEST: 3 Urine 1 Blood 4 Refused 2 Breath 5 None	RESULTS %	AL. DRUG	PHYS. DEF	RES	RACE	SEX	INJ	S. EQUIP	EJECT

HAZARDOUS MATERIALS BEING TRANSPORTED (1 Yes 2 No)	PLACARDED (1 Yes 2 No)	RECOMMEND RE EXAM (1 Yes 2 No)	(If YES, Explain in Narrative)	DRIVER'S PHONE NO.

PASSENGER'S NAME (Additional on Continuation Page)	CURRENT ADDRESS	CITY & STATE / ZIP	AGE	LOC	INJ	S. EQUIP	EJECT

#	PROPERTY DAMAGED - OTHER THAN VEHICLES	EST. AMOUNT	OWNER'S NAME	ADDRESS	CITY	STATE	ZIP
1		$					
2		$					

CONTRIBUTING CAUSES - DRIVER / PED — 1: 02; 2: 12; 3: 07

01 No Improper Driving / Action
02 Careless Driving
03 Failed to Yield Right-of-Way
04 Improper Backing
05 Improper Lane Change
06 Improper Turn
07 Alcohol-Under Influence
08 Drugs-Under Influence
09 Alcohol & Drugs-Under Influence
10 Followed Too Closely
11 Disregarded Traffic Signal
12 Exceeded Safe Speed Limit
13 Disregarded Stop Sign
14 Failed to Maintain Equip. / Vehicle
15 Improper Passing
16 Drove Left of Center
17 Exceeded Stated Speed Limit
18 Obstructing Traffic
19 Improper Load
20 Disregarded Other Traffic Control
21 Driving Wrong Side / Way
22 Fleeing Police
23 Vehicle Modified
77 All Other (Explain)

VEHICLE DEFECT — 1: 01; 2: ; 3:

01 No Defects
02 Def. Brakes
03 Worn / Smooth Tires
04 Defective / Improper Lights
05 Puncture / Blowout
06 Steering Mech.
07 Windshield Wipers
08 Equipment / Vehicle Defect
77 All Other (Explain in Narrative)

VEHICLE MOVEMENT — 1: 01; 2: ; 3:

01 Straight Ahead
02 Slowing / Stopped / Stalled
03 Making Left Turn
04 Backing
05 Making Right Turn
06 Changing Lanes
07 Entering/Leaving Parking Space
08 Properly Parked
09 Improperly Parked
10 Making U-Turn
11 Passing
12 Driverless or Runaway Veh.
77 All Other (Explain in Narrative)

VEHICLE SPECIAL FUNCTIONS — 1: 01; 2: ; 3:

1 None
2 Farm
3 Police Pursuit
4 Recreational
5 Emergency Operation
6 Construction / Maintenance

LOCATION ON ROADWAY — 1: 02; 2: ; 3:

1 On Road
2 Not On Road
3 Shoulder
4 Median
5 Turn Lane / Safety Zone

PEDESTRIAN ACTION — 1: ; 2: ; 3:

01 Crossing Not at Intersection
02 Crossing at Mid-block Crosswalk
03 Crossing at Intersection
04 Walking Along Road With Traffic
05 Walking Along Road Against Traffic
06 Working on Vehicle in Road
07 Other Working in Road
08 Standing/Playing in Road
09 Standing in Pedestrian Island
77 All Other (Explain)
98 Unknown

LOCATION TYPE — 02

1 Primarily Business
2 Primarily Residential
3 Open Country

FIRST / SUBSEQUENT HARMFUL EVENT — F: 31; S:

01 Collision With MV in Transport (Rear end)
02 Collision With MV in Transport (Head-on)
03 Collision With MV in Transport (Angle)
04 Collision With MV in Transport (Left Turn)
05 Collision With MV in Transport (Right Turn)
06 Collision With MV in Transport (Sideswipe)
07 Collision With MV in Transport (Backed Into)
08 Collision With Parked Car
09 Collision With MV on Other Roadway
10 Collision With Pedestrian
11 Collision With Bicycle
12 Collision With Bicycle (Bike Lane)
13 Collision With Moped
14 Collision With Train
15 Collision With Animal
16 MV Hit Sign/Sign Post
17 MV Hit Utility Pole/Light Pole
18 MV Hit Guardrail
19 MV Hit Fence
20 MV Hit Concrete Barrier Wall
21 MV Hit Bridge/Pier/Abutment/Rail
22 MV Hit Tree/Shrubbery
23 Collision With Construction Barricade/Sign
24 Collision With Traffic Gate
25 Collision With Crash Attenuators
26 Collision With Fixed Object Above Road
27 MV Hit Other Fixed Object
28 Collision With Moveable Object On Road
29 MV Ran into Ditch/Culvert
30 Ran Off Road into Water
31 Overturned
32 Occupant Fell From Vehicle
33 Tractor/Trailer Jackknifed
34 Fire
35 Explosion
77 All Other (Explain)

ROAD SYSTEM IDENTIFIER — 04

01 Interstate
02 U.S.
03 State
04 County
05 Local
06 Turnpike / Toll
07 Forest Road
77 All Other

LIGHTING CONDITION — 05

01 Daylight
02 Dusk
03 Dawn
04 Dark (Street Light)
05 Dark (No Street Light)
88 Unknown

ROAD SURFACE / CONDITION — 01

01 Dry
02 Wet
03 Slippery
04 Icy
77 All Other (Explain)

WEATHER — 01

01 Clear
02 Cloudy
03 Rain
04 Fog
77 All Other (Explain)

ROAD SURFACE TYPE — 02

01 Slag / Gravel / Stone
02 Blacktop
03 Brick / Block
04 Concrete
05 Dirt
77 All Other (Explain)

CONTRIBUTING CAUSES - ROAD — 01

01 No Defects
02 Obstruction With / Without Warning
03 Road Under Repair / Construction
04 Loose Surface Materials
05 Shoulders - Soft / Low / High
06 Holes / Ruts / Unsafe Paved Edge
07 Standing Water
08 Worn / Polished Road Surface
77 All Other (Explain)

CONTRIBUTING CAUSES ENVIRONMENT — 01

01 Vision Not Obscured
02 Inclement Weather
03 Parked / Stopped Vehicle
04 Trees / Crops / Bushes
05 Load on Vehicle
06 Building / Fixed Object
07 Signs / Billboards
08 Fog
09 Smoke
10 Glare
77 All Other (Explain)

TRAFFIC CONTROL — 10

01 No Control
02 School Zone
03 Traffic Signal
04 Stop Sign
05 Yield Sign
06 Flashing Light
07 Railroad Signal
08 Officer / Guard / Flagman
09 Posted No U-Turn
10 Special Speed Zone
11 No Passing Zone
77 All Other (Explain)

SITE LOCATION — 01

01 Not At Intersection / RR X'ing / Bridge
02 At Intersection
03 Influenced By Intersection
04 Driveway Access
05 Railroad Crossing
06 Bridge
07 Entrance Ramp
08 Exit Ramp
09 Parking Lot - Public
10 Parking Lot - Private
11 Private Property
77 All Other (Explain)

TRAFFICWAY CHARACTER — 03

1 Straight-Level
2 Straight-Upgrade / Downgrade
3 Curve-Level
4 Curve-Upgrade / Downgrade

TYPE SHOULDER — 02

1 Paved
2 Unpaved
3 Curb

VIOLATOR	FL STATUTE NUMBER	NAME	CHARGE	CITATION #
			PENDING	

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FLORIDA TRAFFIC CRASH REPORT

NARRATIVE / DIAGRAM

MAIL TO: DEPT. OF HIGHWAY SAFETY & MOTOR VEHICLES
TRAFFIC CRASH RECORDS
TALLAHASSEE, FLORIDA 32399-0500

DO NOT WRITE IN THIS SPACE

EMS INFO FATALS ONLY	TIME EMS NOTIFIED AM PM	TIME EMS ARRIVED AM PM	COUNTY / CITY CODE	DATE OF CRASH	INVEST. AGENCY REPORT NUMBER	HSMV CRASH REPORT NUMBER
			99100	06/30/96	08054540226053	52331700

NARRATIVE / ADDITIONAL PASSENGERS

VEHICLE #1 WAS NORTHBOUND ON SHATTERED DREAMS RD. THE DRIVER OF VEHICLE #1 LOST CONTROL OF VEHICLE #1 AND VEHICLE #1 WENT OFF THE ROAD ON EAST SHOULDER FACING EAST. VEHICLE #1 SLID SIDEWAYS ON EAST SHOULDER AND THEN BEGAN TO FLIP. VEHICLE #1 OVERTURNED APPROXIMATELY TWO (2) TIMES BEFORE COMING TO FINAL REST ON EAST SHOULDER OF SHATTERED DREAMS RD., UPRIGHT, FACING EAST. PASSENGER #1 WAS EJECTED FROM VEHICLE #1.

SEC #	PASS #	PASSENGER NAME	ADDRESS	CITY & STATE	ZIP	Age	Loc	Inj	Safety Equip	Ejct
1	2	JODY RIDER	22 CIRCLE Rd	HopeCity, FL	33333	16	4	2	2 N/A	1

VIOLATOR	FL STATUTE NUMBER	NAME	CHARGE	CITATION #
VIOLATOR	FL STATUTE NUMBER	NAME	CHARGE	CITATION #

PENDING BAC

WITNESS - NAME	ADDRESS	CITY & STATE	ZIP
1 TERRY WILSIN	671 FUNTIMES BLVD	HopeCity, FL	33333
WITNESS - NAME 2	ADDRESS	CITY & STATE	ZIP

FIRST AID GIVEN BY - NAME: EMS - SUNSHINE CTY (1 Physician or Nurse, 2 Paramedic or EMT, 3 Police Officer, 4 Certified 1st Aider, 5 Other) — 2

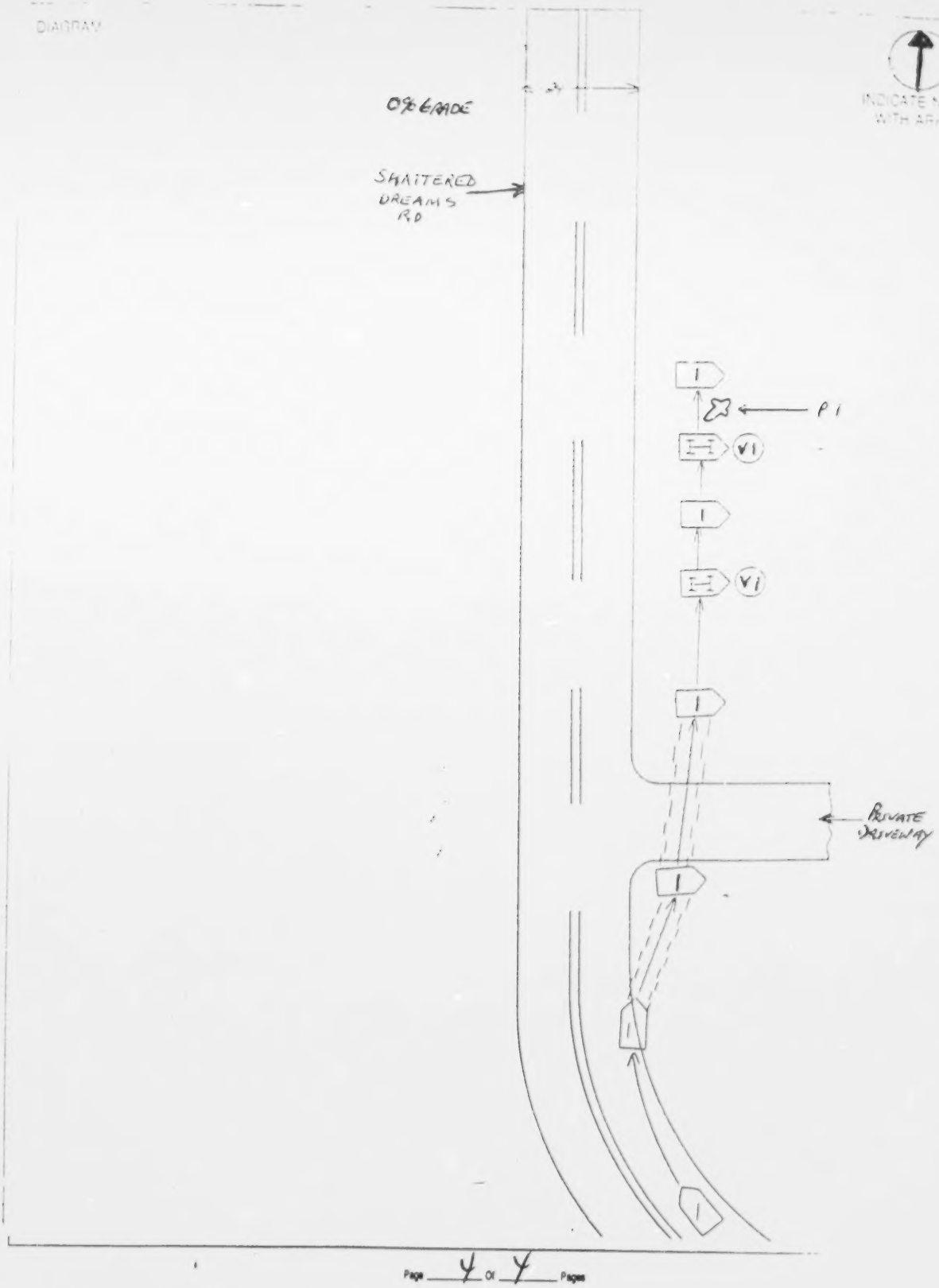
INJURED TAKEN TO: SUNSHINE HOSPITAL

BY - NAME: EMS - COUNTY

WAS INVESTIGATION MADE AT SCENE?	WHERE?	IS INVESTIGATION COMPLETE?	WHY?	DATE OF REPORT	PHOTOS TAKEN?	BY: INVEST. AGENCY	OTHER
1 YES [X] 2 NO [ ]		1 YES [ ] 2 NO [X]	BAC	01/30/96	1 YES [X] 2 NO [ ]	[ ]	[X]

INVESTIGATOR - RANK & SIGNATURE	ID / BADGE NUMBER	DEPARTMENT	FHP	SO	CPD	OTHER
Dale Braden Sgt.	0096	FHP	[X]	[ ]	[ ]	[ ]

DIAGRAM



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ACCIDENT INVESTIGATION SUPPLEMENT

On Sunday, June 30, 1996, at approximately 0057 hours, writer arrived at an accident scene at Shattered Dreams Road. Upon arrival writer observed a 1995 blue Mustang on the east shoulder of Shattered Dreams. It was apparent from writer's observation that the vehicle had flipped over one or more times. EMS and Deputy Sheriff Charles Harris were already on the scene. EMS had Blameless, Francis and Appleman, Lee already loaded for transport. EMS Savior advised writer that Blameless was unconscious and had been stabilized due to possible neck or spinal column injuries. EMS advised that Appleman had suffered a compound fracture of the radius and ulna of the right forearm. Due to the necessity for immediate medical treatment, writer determined to postpone the interviews of Appleman and Blameless and released EMS from the scene.

Deputy Harris advised that a passenger in the vehicle, Rider, Jody, dob 07-15-77, was uninjured and available to interview.

On Sunday June 30, 1996, at 0114 hours, your undersigned interviewed Jody Rider, regarding what transpired prior to the accident. Rider advised that Rider, Francis Blameless and Lee Appleman left the residence of Terry Wilson sometime between 11:30 p.m. and 12:00 midnight. Rider advised that Wilson had hosted a graduation party from 7:00 p.m. until around midnight. Rider advised that Rider had drunk several beers during the

course of the evening and could not be sure of times. Rider could not recall how many beers Rider had consumed, but said "about five or six."

Writer asked Rider if Appleman had consumed any alcoholic beverage. Rider advised that right before they left the residence, Rider did see Appleman empty a plastic jug of Vodka into the plastic cup and drink from it. Rider could not advise how much Vodka was left in the bottle before Appleman emptied it. Rider had no knowledge where the vodka bottle came from or what Appleman did with it when it was empty.

Rider advised that when they left, Blameless had a beer bottle when Blameless got into vehicle #1. Rider advised that Rider also had removed a beer from the refrigerator of the Wilson residence but had not opened it before or during the ride.

Writer asked Rider if Appleman appeared intoxicated when they left the Wilson residence. Rider advised Rider could not tell.

Writer asked what happened after they left the Wilson residence. Rider stated that Appleman was driving them home. Rider stated that shortly after leaving the Wilson residence, Blameless, who was in the front passenger seat, asked Appleman how fast the car could go. At the time they were at a stop sign. Rider stated Appleman began to accelerate quickly from the intersection and that Rider watched the speedometer climb to 65 mph. Rider stated that Blameless asked "Is that the best

this car can do?' Rider stated Appleman responded, "This road has too many curves to go any faster."

Rider stated the car seemed to slow down a bit and Rider could see a sign for a curve that said 25 mph out the passenger window. Rider stated the next thing Rider knew, Blameless yelled, "LOOK OUT!". Rider stated the next thing Rider knew, the car was sliding and started to flip. Rider stated that when the car came to rest, Blameless wasn't in the passenger seat anymore. Rider stated Appleman helped Rider out of Rider's seatbelt and they ran to Blameless who was unconscious. Rider stated that Rider ran to a nearby residence to call for help while Appleman stayed with Blameless. Rider believes Appleman was wearing a seatbelt but that Blameless was not.

Writer would note that writer detected a strong odor of alcohol on Rider's breath. Rider could not walk without assistance and had slurred speech. In writer's opinion Rider appeared intoxicated. Writer gave Rider paper and obtained a written statement which was placed into evidence.

Writer located Deputy Harris who confirmed that when Harris spoke with Appleman, Appleman admitted to being the driver and owner of the vehicle. Harris also stated to writer that he detected a moderate odor of alcohol about Appleman's person when he spoke with Appleman. Writer contacted Sunshine County Hospital and requested a blood draw at 0145 hrs. Writer conducted an accident investigation and completed Florida Traffic Crash Report. Writer determined that the vehicle was

traveling in excess of 50 mph approaching and into the curve which is clearly designated by traffic sign and special 25 mph speed zone. Writer conducted a search for evidence that Appleman applied brakes before crash. The search for skid marks was negative. Writer did observe some yaw marks and then gouge marks in the dirt on the right shoulder at 30 feet south of a private driveway. Vehicle #1 slid sideways for 20 feet before flipping over two times coming to final rest upright facing east.

While conducting accident investigation, writer was approached by Arnold Homeowner, 42967 Shattered Dreams Road, Hope City, 33333. Mr Homeowner inquired of writer what happened. Writer advised Homeowner of writer's investigation. As Homeowner left the area, writer observed Homeowner upright a garbage can and replace the lid. As writer completed accident report at 6:30 a.m., writer heard someone yelling, "Here Spot. Come on boy. Here Spot." Writer could not determine origin of voice.

Writer proceeded to hospital where writer interviewed Appleman, Lee at approximately 0732 hours. After completing writer's accident investigation, writer advised Appleman writer was now conducting a criminal investigation and read Appleman Miranda. After Miranda, which Appleman waived, Appleman advised writer that while driving Blameless grabbed the steering wheel pulling the vehicle east onto the shoulder when a dog ran out in front of the vehicle. Appleman described the dog as black and

tan, possibly a german shepherd.

Writer asked Appleman if Appleman had been drinking earlier in the evening. Appleman stated that Appleman had found a bottle of vodka when leaving the Wilson residence that had a small amount of clear liquid inside. Appleman stated Appleman poured the small amount of liquid into Appleman's glass of orange juice just prior to entering vehicle #1. Writer asked Appleman if Appleman had drunk any other alcohol that evening. At that point Appleman advised that Appleman wanted to consult with an attorney before answering any more questions. Due to Appleman's request for counsel, writer terminated the interview.

As writer started to leave, Appleman asked writer about Blameless' condition. Writer advised Blameless was still in emergency and unconscious. At that point, Appleman stated, "It's all my fault." Writer asked Appleman if Appleman wished to waive counsel at this time and continue with the interview. Appleman replied in the negative.

Writer collected blood sample from the nurse who withdrew same from Appleman and placed it into trunk of writer's vehicle. At 0840 hrs. writer left the hospital and returned to accident scene to look for any evidence of animal activity in the vicinity of the crash. Writer could not locate any evidence of animal activity in the soft grassy shoulders north or south of the crash site.

Writer conducted a neighborhood check regarding stray or missing pets with negative results. Writer further conducted

records check with Animal Control for reports of stray or uncontrolled pets in the vicinity of the crash site. Results were negative.

Writer proceeded to the residence of Terry Wilson at 671 Funtimes Blvd., Hope City, FL 33333, to interview Wilson and possible witnesses to activity at party. Writer observed and impounded several empty bottles and cans of beer as well as an empty 1.5 litre plastic bottle of vodka located on the south side of the residence between sidewalk and curb, approximately 30 feet from the driveway.

Writer knocked on the door of the residence and spoke with Mr. and Mrs. Wilson. The Wilsons admitted they had hosted a party for their child, Terry Wilson to celebrate high school graduation. Both maintained that the party was supervised and no alcoholic beverages were served to or observed in the possession of any minors. Writer asked to speak to Terry Wilson, but Mrs. Nelson advised that she was unable to wake the child. Writer left card with phone number requesting they have Terry contact writer for an interview.

Status: pending

Typed: July 5, 1996

Dictated: June 30, 1996

Trooper D. Broadside

WITNESS STATEMENT

I, Jody Rider, hereby make this statement to DALE BROADSIDE, who has identified him/herself as a Highway Patrolman for the State of Florida. Last night we went to A party at TERRY's house. There was beer at the party and I had five or six. I don't think Lee had any beer, but LEE did drink vodka. I don't know how much. We left the party, ME, LEE AND Fran, around 11:30 - 12:00 MIDNIGHT. LEE HAD A glass with VODKA AND orange juice. Fran and I had beers. When we got to the stop sign on Shattered Dreams, FRAN YELLED FOR LEE to give it some gas. I watched the speedometer hit 65 mph before the crash. FRAN wanted to go faster but LEE SAID there were too many curves. NEXT thing I KNEW, FRAN YELLED "LOOK OUT". I SAW A traffic sign saying 25 mph, AND the car started rolling over. I couldn't tell if LEE was DRUNK OR NOT - THE END.

Witness: Trp. Dale Broadside. Signature: Jody Rider

Witness: _____ Dated this 30th day of June, 1996.

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ACCIDENT INVESTIGATION SUPPLEMENT #2

On Tuesday, July 2, 1996, writer met with Terry Wilson, dob 3-17-78, at the Wilson residence at 671 Funtimes Blvd., Hope City, FL 33333. The interview was tape recorded and placed into evidence. Writer drove from the Wilson address to the accident scene at Shattered Dreams Rd. using the trip odometer on writer's patrol vehicle to calculate the distance. The distance is 14.8 miles and took writer approximately 28 mins. 15 secs. to travel in moderate traffic observing the speed limits which ranged from thirty mph to forty-five mph.

On Friday, July 5, 1996, writer received a message from dispatch to contact Pat Clementz regarding the accident investigation of June 30, 1996, on Shattered Dreams Road. Writer contacted Pat Clementz, dob 02-17-78 and arranged an interview that afternoon. Clementz advised writer that Clementz had attended the party at the Wilson residence and had occasion to observe Appleman's departure from same. Clementz advised writer Appleman was unsteady and stumbling when Appleman left the residence. Clementz advised writer that Clementz observed Appleman fill a 16 oz. plastic cup with vodka from a bottle located in the passenger seat of Appleman's vehicle. Clementz advised that Appleman threw the empty vodka container onto the ground as they exited the premises in vehicle #1. Clementz further advised writer that Appleman discarded several empty beer bottles from the vehicle as well. Clementz stated that

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Appleman handed Francis Blameless and Jody Rider unopened beers as they entered vehicle #1. Clementz stated that the foregoing was observed by Terry Wilson as well.

Clementz advised writer that Appleman had been drinking all night long and Clementz had begged Francis Blameless to ride home with Clementz instead of Appleman.

Clementz stated that Clementz had heard that Appleman was claiming a dog ran out in the road and blaming Blameless for the accident because Blameless suffered amnesia. Clementz stated Clementz was friends with both Blameless and Appleman, but felt compelled to come forward and tell the truth. Writer advised State Attorney of additional witness.

Status: pending

Typed: July 10, 1996

Dictated: July 09, 1996

Trooper D. Broadside

DEPOSITION OF LESLIE LEE

PROCEEDINGS

DIRECT EXAMINATION

BY ATTORNEY PEBBLE

Q Good morning. How are you today?

A I'm fine.

Q Have you had a chance to review your reports on this case?

A Yes, I have.

Q Please state your full legal name and tell me a little bit about your professional background.

A My name is LESLIE LEE. I've been with the Department of Law Enforcement for about -- well, a little over 15 years. I started back in August, 1980. I have a Bachelor's Degree in chemistry. I earned that in 1976 from the University of Notre Dame. I have been working in toxicology since December of 1977. My first position was with the medical examiner's toxicology laboratory in Tacoma, Washington, and I worked there for two years and received my initial training in blood alcohol analysis and drug testing. Then I came to work in Florida in 1979 with Pasco County.

Q Okay. Did you --

A In 1980 I started working with the Florida Department of Law Enforcement and I've been with them

ever since.

Q Okay. Do you have any, like, continuing education requirements or any periodicals that you subscribe to, sir?

A We don't have any specific continuing education requirements. I have continued my education and training in toxicology by attendance at professional short courses over the years.

Q Okay. Thank you.

A And --

Q I'm sorry. Go ahead.

A I was trying to -- your second part of the question was if we get periodicals, and we do, yes. We look at Journal of Forensic Sciences and Journal of Analytical Toxicology, and the normal literature in the field of toxicology that's available to us here.

Q Thank you.

We're talking today about the Lee Appleman case and it looks like you received a submission from the Tampa laboratory on October 15th?

A Yes. It came to the Tampa lab on July 15th, according to my records, and then was transferred to Tallahassee via Federal Express and received here on October 15th, 1996.

Q I note the report that I have from the Tampa lab indicates that the -- that there was heavy clotting

in the sample.

A Okay.

Q Is that correct?

A When I opened the sample -- let me check my notes here. When did I open them?

It was sent up here for a drug screening, which at that point in time we started doing drug screens for the Tampa laboratory.

When I opened it, there were two tubes of blood and the blood-alcohol kit, and the tubes were -- the blood in the tubes was clotted.

Q What is that an indication of if the blood in there is clotted?

A Well, there's a couple of things it could be. These two labeled tubes were the normal Becton-Dickinson gray-stopper vials which contained, according to the manufacturer, sodium fluoride and EDTA, which are chemical additives that are intended to preserve the blood and prevent clotting from occurring.

It's been my experience that when the blood is drawn and the tubes aren't mixed properly, that is either mixed too vigorously or not mixed vigorously enough, it really doesn't take vigorous mixing to mix the samples up, there may be clotting that can occur in the tubes. That's one situation.

Another situation that I have seen is if the

samples are subjected to heat, if they are collected and placed in the trunk of a car or up on the dashboard, especially in the summer time, we see that from time to time, the sample can get, basically cooked, and that will cause the samples to clot or gel.

Q The clotting, that means there's actually been a chemical reaction within the tube; is that correct?

A Well, the clotting is a biochemical process. So, I guess the answer to your question is yes.

Q For example, I think this submission was in July and it looks like it was Federal Expressed to you. Could that have been a source of the problem that the heat during the main transit --

A Well, apparently it was already clotted -- this is according to the lab report from Tampa, but it was already clotted when received in Tampa.

Q Okay.

A Because they initially looked at it and then sent it up here.

Q All right. And apparently you did an analysis on it, up there?

A Right. It was transferred up here for the purpose of doing a drug screen that had been requested on the sample. Tampa doesn't do drug screens on blood samples. So, after they looked at it, then they sent it up here for the requested drug test.

Q Apparently you also did a blood-alcohol check on it?

A I did that later. After I completed the drug test --

Q Yes.

A -- and reported the drug findings, then I was asked by the Florida Highway Patrol to -- if I could perform a blood alcohol test on the sample. So I went back and at that point in time, did a blood alcohol test which was in January of '97.

Q Apparently the blood alcohol came back a .06?

A That's correct.

Q Given the clotting problem, do you feel comfortable with the .06 readings as being accurate?

A Yes, I do.

Q Accurate at least at the time you got them, right?

A That's correct.

Q When did you actually do the blood analysis, sir?

A I did the blood alcohol -- the actual date of the analysis was January 31st, 1997.

Q Given the fact that there's clotting, can we be sure that the blood alcohol that you determined on January 31, 1997 accurately reflects what it was at the time that it was withdrawn back on June 30, 1996.

A The clotting by itself, I don't think, would have much to do with that. The length of time of storage would have more effect than the clotting itself. Clotting doesn't -- in and of itself, clotting does not affect the alcohol concentration of the sample.

Q The clotting is just indicative that there may be a chemical reaction going on; it suggests that, right?

A Well, it suggests that there's something in the sample's history that's allowed the blood to clot, which is a normal process for a blood sample that's drawn.

Q But sodium fluoride is supposed to retard that; that acts as the anticoagulant?

A Sodium fluoride does, and also the EDTA.

Q You had mentioned that the length of time might have something to do with it. The length of time between the time it was drawn and your check, based on your experience, is the blood-alcohol going to go up or down, or can you say one way or the other?

A Based on my experience and study of this storage question, samples that are collected in sodium fluoride tubes such as these, the blood alcohol concentration over a length of time, such as this of several months, will go down.

Q What do you think caused the clotting in this case in the blood sample?

A I don't know. Speculation would be that it's

most likely just from mixing of the sample after it was collected.

Q Did you do any tests on the sample to try to find out what would have caused the clotting?

A I'm not familiar with any such tests, no.

Q I mean, for example, checking whether there was even sodium fluoride in there. In other words, whether the anti-coagulant was -- whether there was some evidence of sodium fluoride in the samples.

A Other than the labeling on the tubes itself, no, I didn't do any chemical testing for sodium fluoride or for the EDTA.

Q The extent of the clotting, have you ever had a case before where the blood was so clotted that the lab in Tampa could not even begin to analyze it for blood alcohol?

A This is the only one that I recall like this.

Q Okay. How many submissions have you gotten over the years?

A Total submissions over the years?

Q Yes. Just approximately.

A I have taken literally thousands of samples for blood alcohol analysis received into the labs that I have been working at.

Q And this is the only sample you've ever seen that was clotted to this extent, correct?

A No. Uh-huh.

No, that's not what you asked me a minute ago.

Q I'm sorry,. You have gotten samples clotted to this extent?

A I've had samples that I received in this laboratory that were clotted to the point to where I couldn't do an alcohol analysis on them. This was not in that state or condition when I saw it.

Q Do you have any opinion as to, you know -- assuming that the original reading was higher than an .06, are you able to quantify and say what it would have been had you been able to analyze it back on June 30 of '96?

A No, not really.

The only thing we know is we have the average losses published in the literature, but it's going to be on the order of about .02 to maybe .04 grams percent, but that's -- again, we don't know about this particular sample. The one thing we do know is that each of the tubes had the same concentration of alcohol in them at the time they were analyzed which indicates that there weren't any -- to me -- that there weren't any really drastic changes taking place in those samples.

Q In other words, the fact that two different tubes both ended up the same way makes you feel that there must not have been something too crazy going on in

either of them, right?

A Yes.

Q Or they wouldn't have ended up the same?

A I wouldn't have expected that.

Q So, your best testimony, your most accurate testimony, is that the blood was a .06 at the time that it was pulled; is that what you would have to say?

A At least a .06 and probably higher, but I can't quantify how much higher due to the variability and the losses that blood samples can undergo.

Q Do IV's, intravenous fluids given, you know, on an emergency basis; does that have any effect on blood-alcohol reading?

A Well, it depends on the manner of collection. If the blood sample itself was drawn out somehow through the IV apparatus or adjacent to the IV, you might get some dilution of it, the alcohol concentration, assuming of course that the IV fluid doesn't have alcohol in it. If the blood is drawn, revoked from the location of the IV, and -- the body and the fluids can re-equilibrate very quickly, so that the -- any dilution effect caused by the introduction of IV fluids, and depending on the quantities, I guess, of course, too, that the dilution effects would be small after re-equilibration has taken place.

Q Did you have any history on the sample, how it

got to Tampa, where apparently the clotting manifested itself?

A Only the -- I guess the paperwork that I have here -- let's see -- it usually tells how it's transported. A copy of the Tampa lab report says that it was received in the Tampa lab via certified mail.

Q Is that a desirable way for it to come to the lab? Would it be better to keep it refrigerated as long as possible and then hand-deliver it?

A Not really. In one or two days, overnight and certified mail usually isn't a problem.

Q Okay. I wanted to ask a little bit about the drug screen.

A Sure.

Q Maybe you can help me out a little bit. What -- you screened it for amphetamines, barbiturates, benzodiazepines, cocaine metabolities, phencyclidines, propoxyphenes, sedative hypnotics, and other drugs; is that correct?

A Yes.

Q Would that include, like pot? I think "cannabinoids" is the fancy name.

A No, not on blood samples. We're not set up to do cannabinoids testing on blood testing yet.

Q Okay. And what you found was negative for everything.

A That's correct.

Q Can you help me out? The kind of tests that you do, does it come up with a whole-blood reading for the blood-alcohol?

A Yes.

Q Okay. And the kind they do in hospitals, are those referred to as serum-blood tests?

A Most often they use the plasma or the serum, as opposed to the whole blood, to run the alcohol tests, but in this particular case, I don't know.

Q Okay. The serum results, if you look at a serum test on blood and the kind of tests you run, is there any, you know, correlation, or does one tend to run higher than the other for the same sample?

a No. It's pretty well established that the alcohol concentration in the body is related to the water content, and since the water content of serum is higher than the water content of whole blood, the alcohol concentration in the serum part of the blood will be higher than it is in the whole blood.

Q What does the literature indicate as far as the average disparity between the two?

A Well, the average report in the literature is somewhere around 15 to 20 percent.

Q Higher per --

A Higher in the serum than in the whole blood.

Q The tests for the serum blood, how does that differentiate from the tests that you do? In other words, the way the hospitals do.

A Pardon me?

Q Can you explain just the difference in the tests that the hospitals do producing the serum-blood result versus the kind of tests that you do?

A It depends on the type of tests they use. There's a number of tests that are available. Most of them that I'm vaguely familiar with are -- or familiar with at all -- are based upon some type of automated clinical analyzer, such as the Dupont, ACA, or maybe a enzymatic test, such as the TDX, or something like that. But these are basically designed to perform the tests on a serum sample as opposed to whole blood, since an awful lot of other trifle tests are done on serum or plasma. It's just a physical difference. If I -- more than the difference in the method --

Q Okay.

A -- of testing.

If I took the serum sample here in my laboratory, and analyzed it using my method, I would also get the higher result, because the serum actually contains a greater concentration of alcohol than the whole blood does from the same sample.

Q Okay. I understand.

What tests did you actually run -- for the blood-alcohol in this case, what tests did you run?

A I used the gas-chromatography based procedure.

Q Okay. And are there any backup tests that you did?

A Well, I do the tests in duplicate so the second test confirms the first. And I also use the two-column method, so that I have a second column in the gas chromatograph of a different polarity, a different nature that I can examine the samples off.

Q Is there any way for you to determine anything other than what the blood-alcohol was at the time it was drawn? That is, have you been asked to, in this case, or are you able to do any retrograde extrapolation?

A I haven't been asked, no. But I can give some ranges depending on the time of the last drink.

Q What information would you have to have before you can do any retrograde extrapolation?

A Basically, the minimum. I would like to know the drinking history or drinking pattern of the subject, which the important information there is the time of the last drink. Then the other information that would be nice to have would be the weight -- height and weight -- of the individual, but that's not really absolutely necessary.

Q Was there anything to indicate that the samples

that you looked at, the tubes were not properly capped or stopped, or that the requisite, you know, procedures were not followed? Other than the clotting, obviously. But anything else to suggest that there was a problem with the packaging initially?

A No, I didn't note anything. It was the standard kit, sealed, two gray stoppered vials, indicated "sodium fluoride" and "EDTA" on the bottle labels. The samples were clotted.

Q By "clotted", does that mean there was no fluid in the --

A No, it doesn't mean there was no fluid. It means there's a small amount of fluid, but then a large amount of clotted material in these particular tubes.

Q What do you have to do to break it down where you can actually do the tests? Do you put some kind of solvent in there or heat it up, or just out of curiosity, how do you eliminate the clotting before you do your tests?

A In this case, what I did for the blood-alcohol test was to vigorously mix the samples, the tubes, with a vortex mixer, and then I put them on a rotator for 15 minutes. And then when I took the tubes off the rotator, at that point they were liquified where I could get a reproducible liquid --

Q The vortex meter - does that react --

A The vortex mixer.

Q Oh, I'm sorry.

The vortex mixer, does that act chemically in a chemical context, with the clotted material to breakdown --

A No. This is mechanical shaking. Just shaking the sample vigorously.

Q You don't put any water or solution in, or anything like that?

A No. It's just simply, you just put the tube on the mixer and it shakes the tube very fast.

Q Okay. What happens that causes blood to clot? Now, I realize that sounds ignorant, but as best as you can describe, if I got, you know, a container with liquid blood in it, what is actually happening when it clots? Is it a chemical reaction or what is actually happening to make it go from liquid to solid?

A Well, I don't remember the details of the process, but the basic process involves substances in the blood, called clotting factors, and certain ions that are present in the blood. And when blood is taken from the body, and placed in a tube, or in even like a small beaker, the natural process is for the blood to clot. There are a series of reactions that take place.

Anticoagulant compounds, such as sodium fluoride, or EDTA, or heparin, that are added to blood to slow down

this clotting process interferes at some point in this chemical reaction.

Q Okay. So, actually, the clotting is a chemical reaction, right? I mean, that's really what's happening, there's some kind of chemical reaction?

A Yes.

Q Okay. And the sodium fluoride or the EDTA, is in there to prevent or retard the chemical reaction?

A That's correct.

Q So, if you have a very clotted sample, we know that there's a whole lot of chemical reactions going on?

A Well, we know the clotting happened, anyway.

Q But that's the result of the chemical reactions?

A Yes.

Q Are there any articles or literature that you've read that address, you know, the possibility that the blood alcohol can increase over lengthy periods of time?

A That can increase? No.

The studies that have been published, dealing with the stability of alcohol-stored blood samples are uniformly demonstrating losses of alcohol from the blood, with storage over lengthy periods of time.

Q Okay. I asked the question: Do those studies quantify, like so many months, you know, it goes up? The

blood-alcohol increases by a certain percent? Or are there any guidelines that are in the literature?

A Well, there's one study published in the Journal of Analytical Toxicology, in Volume 8, March-April of 1984.

Q What did that say?

A By Chang and co-workers. They looked at samples similar to the ones that we get in for analysis, that have been analyzed and then stored at room temperature for periods of three years, and then another set of samples that had been stored for periods of six and three-fourths years.

Q Okay. What happened?

A Then they went back and reanalyzed them, and all of the samples showed losses of alcohol from their original alcohol concentration.

Q Can you give me an idea, percentage wise, how much they went up or down over a --

A Well, not in percent, but in concentration, the range of losses ranged from about .02 to .04 grams of alcohol per hundred milliliters of blood.

Q Okay.

A .02 to .04 percent.

Q Is that related to what it originally was? In other words, did they start with a known of .20 and then the loss --

A They started with various concentrations, from low concentrations to high concentrations.

Q Okay. For example, at the high concentrations, they started at a .20, then how much would that go up, or how much would that go down, I guess?

A The concentrations weren't related to the original concentration. The losses were not related to the original concentration.

Q Okay.

A In other words, if you had a sample that started out with a high concentration, it did not necessarily lose more over the storage period than a sample that started out with a lower concentration.

Q The duration of these was six years and three years?

A Yes. At room temperature.

Q Okay. Now, obviously in our case, once you received the sample, you refrigerated it, right?

A That's correct.

Q Okay. And then you only held it for what, seven or eight months before you tested it?

A It was in our lab from July to January. That's about six months, I guess, before we did the alcohol test. And it was in refrigerated storage that whole time, except when it was out for sampling for the drug test.

Q So the study that these guys did really isn't very close to what occurred in our case here, right?

A The study that I'm referring to is a much worse case scenario than what we're dealing with.

Q Right. That's what I'm getting at. That was at room temperature for a longer period of time, whereas in our case, basically, it was refrigerated for a much shorter period of time, which would tend to keep it more stable.

A That's correct.

Q As far as the -- if indeed, at some point in time, that State asks you to do the retrograde extrapolation just so I understand what your opinion is, approximately how long do you feel it is from the time a person ingests a drink to the time that it's fully reflected in their blood, the alcohol from the drink?

A On average, between 30 and 60 minutes.

Q And it depends on things like how full their stomach is?

A Yes, it depends on things like that. It depends on how much they are drinking in that dose.

Q And you, you know, your opinion as far as the burn-off, you know, once a person peaks out, what is your professional opinion as to the time it takes to burn off alcohol, the dissipation rate?

A The average rate of elimination has been pretty

well documented to be about .015 to .018 grams percent per hour; however, there's a range associated with this that varies anywhere from .01 up to about .02.

Q And --

A And if you use three decimal places, the low range is probably closer to about .008 or .009. I would use .008 as the bottom of the range as being the most conservative estimate of the burn-off rate. Now, experienced drinkers or high blood alcohol concentration or alcoholics, the burn-off rate can be higher than .02. It can be .025 or .03.

Q If I give you a hypothetical example that Lee Appleman's last drink was at the time of the crash, that being 12:06 a.m., and the blood draw was at 2:34 a.m., what can you tell me with a person that weighs 150 lbs.

A Well, let me print out a range for you on my computer (pause). Alright, as you can see, if I calculate the last drink at 12:06 a.m., I allow 30 minutes for absorption and 30 minutes for plateau, I am left with 88 minutes. Since I don't know how many drinks were consumed total, I use a zero (0). At a .06 blood draw at 2:34 a.m., for the average male I would calculate the blood alcohol at .052 at 12:06 a.m.

Q How do you arrive at that?

A The average male distribution rate is .68. The average female is .55. A very lean, or muscular person

has an average distribution rate of .86. Those with high body fat have a .47 so I can give ranges based upon body fat.

This line chart shows absorption, plateau, then elimination of alcohol. With the last drink at 12:06, 12:36 is maximum absorption on average person, 1:06 is end of plateau period, then elimination begins until test at 2:34 a.m. where we know the blood alcohol is .06%. Deducting a full .03 for absorption and plateau from the peak at .082%, the minimum blood alcohol for the average male is a .052. For the average female I do the same, but the assumption is the average female has somewhat more body fat, which means higher blood alcohol per volume because fat doesn't absorb the alcohol. Therefore, the average female with the last drink at 12:06 a.m. and other factors you have given me would have a minimum blood alcohol of .056 at 12:06 a.m.

Q So the more body fat the fewer the number of drinks to get a higher blood alcohol percentage?

A Yes, assuming a constant weight.

Q How many drinks would it take a 150 lb. person to produce the blood alcohol level of .06 at 2:34 a.m.

A The second set of numbers show the range in the number of drinks present to produce a .06. The average male would need the alcohol from 2.3 ounces of 100 proof alcohol present to produce that level, or a little over

what we usually say two drinks. For the average female, it would take 1.87 ounces of 100 proof alcohol to be present. We figure a one ounce shot of 100% equals one drink. When I say "present", I mean in the individual's system at the time the test was taken.

Q What happens as we change the time of the last drink?

A There will be dramatic changes in the blood alcohol for 12:06 a.m. For example, if the last drink was at 11:45 p.m. I would allow for an only nine minutes of absorption after the accident time of 12:06 a.m. Adjusting the total percent volume of alcohol consumed would put the range from .069 to .105. The average male would be about .078 and the average female .084 at the time of the crash.

If the last drink was consumed at 11:30 p.m., now the 30 minutes absorption occurs before the crash at 12:06 a.m. So with a .06 at 2:34 a.m., I would calculate the blood alcohol at the time of the crash for the average male of .091% and .097% for the average female.

If the last drink was at or before 11:00 p.m. -- absorption and plateau have resulted in peak prior to the accident. At this point I go back from the .06 at 2:34 a.m. and the average male is at .097% and the average female is at .104% at the time of the crash.

Q But the range goes as low as .085.

A Yes, but the top end is .134. The calculations are made using average elimination rates and distribution rates. Without knowing your client's exact metabolism, body fat, etc., I can only speak in terms of averages. However, your client would fall somewhere within the minimum and maximum.

Q I don't have any further questions.

Case No. 96-9721-CF — LESLIE J. LEE

Subject: APPLEMAN, LEE — 10-01-1996 10:00:45

Body Weight in Pounds: 150

Chemical Test Results: .06

88 Minutes Elapsed Since EITHER...
a. Time Subject STARTED Drinking (MINUS 15 min.), OR...
b. Time Subject Was Stopped for Traffic Violation.

ALLEGED No. of Drinks Consumed: 0

Total No. Of Drinks Present per Distribution Ratio

.47	.55	.68	.86
1.60035	1.87275	2.31540	2.92830

Maximum BAC% per Distribution Ratio for ALLEGED Drinks Consumed

.47	.55	.68	.86
.0000000%	.0000000%	.0000000%	.0000000%

Total Per Cent Volume of Alcohol Consumed

.0001667	.0002500	.0003000	.0003333	.0004167	.0005000
.075%	.082%	.086%	.089%	.097%	.104%
(-.03) .045%	.052%	.056%	.059%	.067%	.074%

Total No. of Drinks Consumed per Distribution Ratio and Elimination Rate

DR \ ER:	.0001667	.0002500	.0003000	.0003333	.0004167	.0005000
.47:	1.99155	2.18714	2.30450	2.38274	2.57834	2.77394
.55:	2.33053	2.55943	2.69676	2.78832	3.01721	3.24610
.68:	2.88139	3.16438	3.33418	3.44737	3.73037	4.01336
.86:	3.64411	4.00201	4.21675	4.35991	4.71782	5.07572

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Case No. 96-9721-CF

Subject: APPLEMAN, LEE

LESLIE J. LEE

10-01-1996 11:01:13

Body Weight in Pounds: 150

Chemical Test Results: .06

109 Minutes Elapsed Since EITHER...
a. Time Subject STARTED Drinking (MINUS 15 min.), OR...
b. Time Subject Was Stopped for Traffic Violation.

ALLEGED No. of Drinks Consumed: 0

Total No. Of Drinks Present per Distribution Ratio

.47	.55	.68	.86
1.60035	1.87275	2.31540	2.92830

Maximum BAC% per Distribution Ratio for ALLEGED Drinks Consumed

.47	.55	.68	.86
.0000000%	.0000000%	.0000000%	.0000000%

Total Per Cent Volume of Alcohol Consumed

.0001667	.0002500	.0003000	.0003333	.0004167	.0005000
.078%	.087%	.093%	.096%	.105%	.114%
(-.009) .069%	.078%	.084%	.087%	.096%	.105%

Total No. of Drinks Consumed per Distribution Ratio and Elimination Rate

DR	ER: .0001667	.0002500	.0003000	.0003333	.0004167	.0005000
.47:	2.08490	2.32718	2.47254	2.56945	2.81173	3.05400
.55:	2.43978	2.72329	2.89340	3.00680	3.29032	3.57383
.68:	3.01645	3.36698	3.57729	3.71750	4.06803	4.41856
.86:	3.81492	4.25824	4.52422	4.70155	5.14486	5.58817

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Case No. 96-9721-CF — JESSE J. LEE

Subject: APPLEMAN, LEE — 10-01-1996 11:00:0

Body Weight in Pounds: 150

Chemical Test Results: .06

124 Minutes Elapsed Since EITHER...
a. Time Subject STARTED Drinking (MINUS 15 min.), OR...
b. Time Subject Was Stopped for Traffic Violation.

ALLEGED No. of Drinks Consumed: 0

Total No. Of Drinks Present per Distribution Ratio

.47	.55	.68	.86
1.60035	1.87275	2.31540	2.92830

Maximum BAC% per Distribution Ratio for ALLEGED Drinks Consumed

.47	.55	.68	.86
.0000000%	.0000000%	.0000000%	.0000000%

Total Per Cent Volume of Alcohol Consumed

.0001667	.0002500	.0003000	.0003333	.0004167	.0005000
.081%	.091%	.097%	.101%	.112%	.122%

Total No. of Drinks Consumed per Distribution Ratio and Elimination Rate

DR \ ER:	.0001667	.0002500	.0003000	.0003333	.0004167	.0005000
.47:	2.15158	2.42720	2.59257	2.70281	2.97843	3.25404
.55:	2.51781	2.84034	3.03385	3.16287	3.48540	3.80793
.68:	3.11293	3.51169	3.75095	3.91045	4.30922	4.70798
.86:	3.93694	4.44125	4.74385	4.94557	5.44989	5.95421

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Case No. 96-9721-CF LESLIE J. LEE

Subject: APPLEMAN, LEE 10-01-1996 10:14:01

Body Weight in Pounds: 150

Chemical Test Results: .06

154 Minutes Elapsed Since EITHER...
a. Time Subject STARTED Drinking (Minus 15 min.), OR...
b. Time Subject Was Stopped for Traffic Violation.

ALLEGED No. of Drinks Consumed: 0

Total No. Of Drinks Present per Distribution Ratio

.47	.55	.68	.86
1.60035	1.87275	2.31540	2.92830

Maximum BAC% per Distribution Ratio for ALLEGED Drinks Consumed

.47	.55	.68	.86
.0000000%	.0000000%	.0000000%	.0000000%

Total Per Cent Volume of Alcohol Consumed

.0001667	.0002500	.0003000	.0003333	.0004167	.0005000
.086%	.099%	.106%	.111%	.124%	.137%

Total No. of Drinks Consumed per Distribution Ratio and Elimination Rate

ER: / DR	.0001667	.0002500	.0003000	.0003333	.0004167	.0005000
.47:	2.25827	2.58723	2.78461	2.91619	3.24515	3.57411
.55:	2.64266	3.02761	3.25858	3.41257	3.79752	4.18247
.68:	3.26729	3.74323	4.02880	4.21917	4.69512	5.17106
.86:	4.13216	4.73408	5.09524	5.33601	5.93794	6.53987

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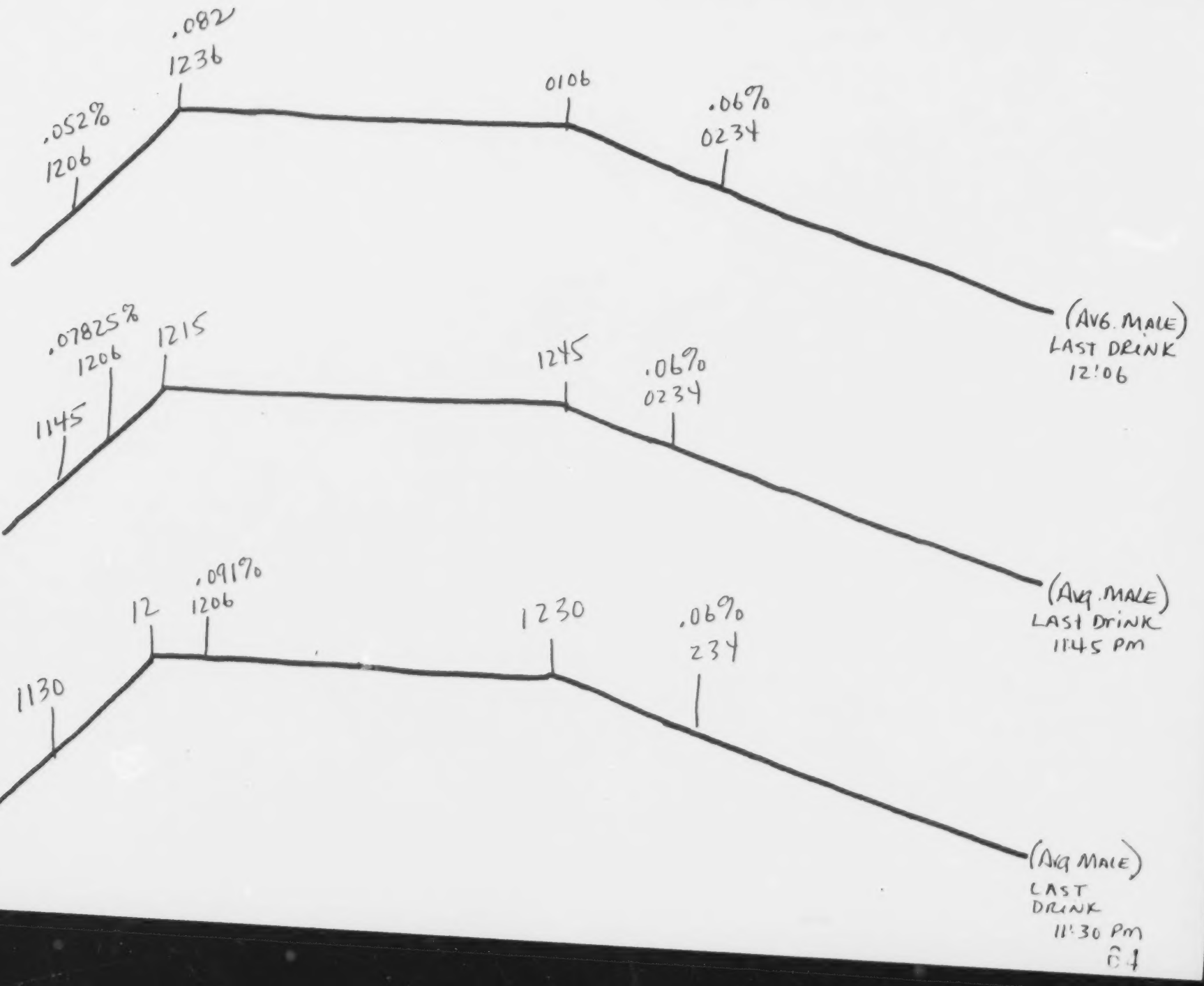
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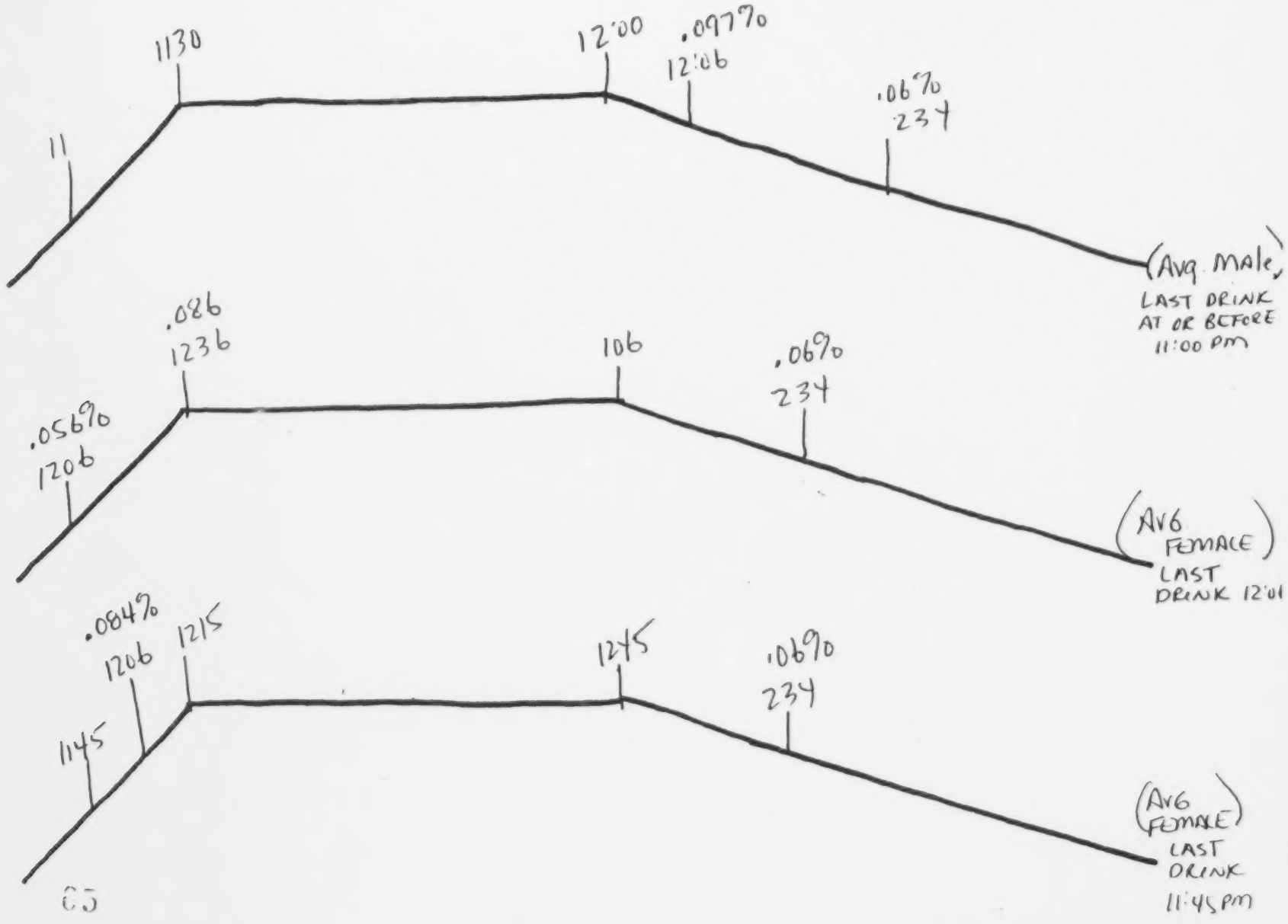
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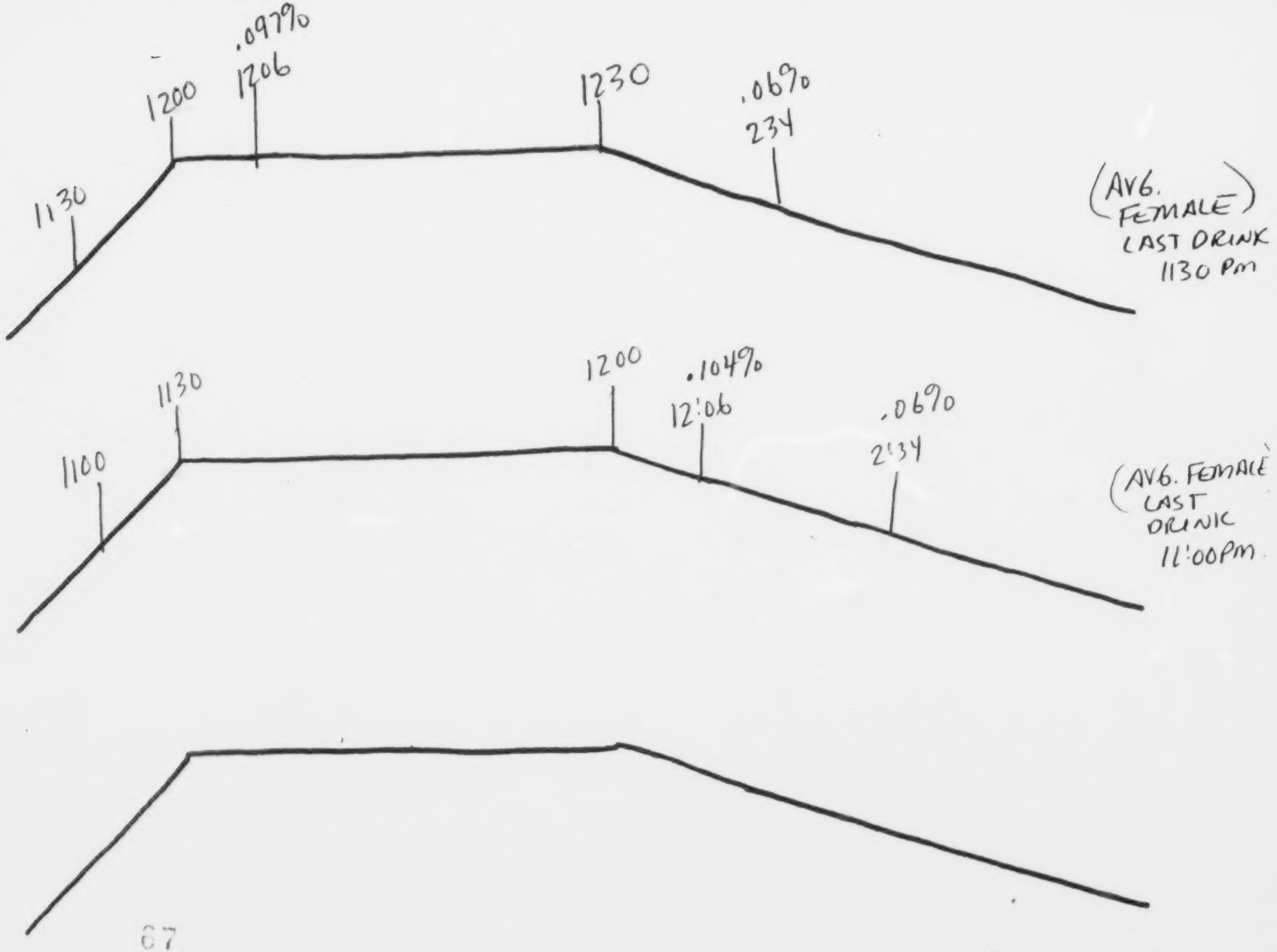
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(AVG. FEMALE) LAST DRINK 1130 PM
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.06%
2:34
1100
(AVG. FEMALE LAST DRINK 11:00PM

CERTIFICATE OF OATH

STATE OF FLORIDA)
COUNTY OF PASCO)

I, the undersigned authority, certify that LESLIE LEE personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 2 day of February, 1997.

LISA M. GUDE
Notary Public - State of Florida
My Commission No. CC348761
Expires: 2/16/98

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATE this 7 day of February, 1997.

LISA M. GUDE

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DEPOSITION OF PAT CLEMENTZ

PROCEEDINGS

DIRECT EXAMINATION

BY ATTORNEY PEBBLE

Q: Good afternoon, my name is William Pebble and I represent Lee Appleman. Lee is charged with one count of DUI with serious bodily injury. You have been listed as a witness in this case and in Florida we have the right to take statements from witnesses under oath to investigate the case and to prepare for trial. Have you ever given a deposition before?

A: No.

Q: Well, this woman is a court reporter and she takes down my questions and your answers on that machine. If this case goes to trial, what we say here will be typed into a transcript. It is very important that you listen closely to my questions before you answer them. If you don't understand my question, ask me to explain or rephrase it for you. Otherwise, later on we are going to assume that the answers you give me are intended to be responsive to the questions asked. Do you understand?

A: Yes.

Q: What is your full legal name?

A: Pat Clementz

Q: Your date of birth?

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A: February 17, 1978.

Q: Are you employed?

A: I work part-time at Super-Market and I'm a senior at Sunshine County High School.

Q: Do you know the defendant, Lee Appleman?

A: Yes.

Q: How do you know Lee?

A: I met Lee through high school. We had some of the same classes when I was a junior and Lee was a senior. Both of us were on the swim team.

Q: Did you consider yourself and Lee to be friends?

A: Not really. I mean at one time we were pretty close; but I worked at nights and weekends and stuff so we really didn't see much of each other outside of school.

Q: Do you dislike Lee?

A: Well, I'm not happy about what happened to my friend Fran. After all, Fran can't run track anymore and lost the scholarship to State University. I blame Lee for that.

Q: Why? Because of the accident?

A: It wasn't just an accident. If Lee hadn't been drinking and showing off in the fancy new car Lee's parents bought for graduation, Fran would be running track at State University instead of pushing a wheelchair

at the community college. I see Fran there all the time because I take a computer class at Sunshine Community College as part of a dual enrollment program. Fran just isn't the same. I mean Fran tries to stay optimistic. Just seems to me the scars and paralysis have crushed Fran's spirit.

Q: Was Fran a good friend of yours?

A: Not really. Actually we see more of each other now than before the wreck. Fran was real popular in school, but always nice to me, not mean like some are you know. I doubt Fran even knew my name two years ago. My friend Elly knew Fran real good and I always kind of admired Fran, you know. Fran was a good student, athletic, but not stuck up. Just a real nice person. Fran doesn't deserve what happened.

Q: Do you know what happened leading up to the accident?

A: Yes and no. I was working at Super-Market when Lee came to the store that afternoon. I knew Lee wasn't old enough to buy alcohol but I didn't say anything. Now I wish I did.

Q: What did you see at the market?

A: Lee was there with some guy and they bought a 12-pack of bottled beer, some orange juice and a 1.5 liter bottle of vodka. I don't know who paid for it. I never saw the guy Lee was with before or since. He

looked older so maybe he actually showed the clerk a valid I.D. Anyway I saw them go toward the register and I was called to bag groceries at another register in the food section so I didn't actually see them leave.

Q: How do you know Lee ended up with the vodka and beer.

A: Because, later I saw Lee at the party at Terry's house. Lee had a glass in hand when they piled into the car before the wreck. When they left, there were beer bottles on the ground where the car had been parked. The plastic vodka bottle was there too. It was empty.

Q: Did you actually see Lee drinking beer or vodka at the party?

A: No, I didn't. But Terry told me Lee was the one who had brought the beer and vodka. I saw a couple people in the backyard with beer bottles and some with beer in cans. One was so drunk he/she was vomiting into a flower box outside the screened patio.

Q: Was that Lee?

A. No.

Q: How many people did you see with beer?

A: At least five or six. Don't get me wrong. It wasn't like they had a cooler full of beer there or anything, but there were people drinking. I mean, you could tell by the way they were acting.

Q: Was Terry drinking anything?

A: Not that I saw or could tell. I talked to Terry and I didn't smell anything like beer or liquor. Terry had a glass of soda or something when we talked, but didn't act drunk or anything.

Q: Did Terry's parents know some of the kid's were drinking?

A: I don't know for sure. They stayed inside the house the whole time I was there. Terry knew for sure and I mean it was pretty obvious. Like I said, I saw people drinking beer out by the pool and in the backyard.

Q: What time did you get to the party?

A: About 10:00 p.m., like I said, I was working earlier in the day.

Q: Did you drink any beer or other alcoholic beverage?

A: No, I don't drink or do drugs.

Q: Were there drugs at the party?

A: I wouldn't know. I didn't see any.

Q: You said you saw Lee when they left in the car. Did you see Lee before that?

A: When I got there, Lee, Fran, Terry, Billy, Katlyn and Elly were looking at the car Lee's parents bought as a graduation present. It was a new blue mustang. They were asking Lee to take them for a ride. Lee took, Terry, Billy, Katlyn & Elly for a ride first.

Q: What time was that?

A: About 10:00 o'clock or little after. I had just got there.

Q: Any of them have beer or alcoholic drinks with them?

A: I don't know. It was pretty dark by the car. There weren't any street lights or anything where Lee parked. I don't remember seeing anything in anybody's hands at that time. When they drove away, Lee was driving. The tires squealed when the car went from the yard onto the pavement. They left pretty fast.

Q: I asked if anyone was drinking?

A: I told you I couldn't tell then. When they got back I saw Lee with a glass in his hand but I didn't taste it or anything. Later, Terry told me that Lee had brought vodka and beer.

Q: When was that?

A: When Terry got back after the ride in Lee's car Terry asked me if I wanted any beer. I said no. Then Terry said, " Lee has some vodka out by the car." I said, " No, thank you."

Q: Did you see Lee between the time Terry came back and the time that Fran went for a ride?

A: Yeah, I saw Lee out by the pool talking with Fran a little later. I said hello and went out in the backyard. People were already starting to leave, so I

tried to say hello to everybody I knew before they left.

Q: How was Lee acting?

A: Hard to say. Lee was louder than usual, I could hear Lee talking from out in the back yard. I could hear Lee and Fran talking.

Q: What were they talking about?

A: School and stuff. What it was going to be like going off to college. What it would be like to be on their own away from their parents. Stuff like that.

Q: Did you see them leave in the car?

A: Yeah, I did. As a matter of fact I was talking with Fran and Terry before Fran left. Everybody else was already gone. We were helping Terry clean up. It was about 11:30 pm. I don't know where Lee was at. I guess with Jody out front. Anyway, I asked Fran if I could offer a ride home. Fran said, "No, I'm catching a ride in Lee's new wheels before I go home." That's when Terry said, "Fran, you know Lee's been drinking and Lee's not too good with that new car. When we took a ride Lee was driving too fast and almost ran a stop sign."

That's when Lee came into the patio area. Lee had a 16 oz. plastic cup in hand and was drinking from it. Lee must have heard what Terry had said, because Lee said, "There was nothing wrong with my driving. You guys were the ones yelling for me to go faster. Besides, I stopped in time didn't I?"

Q: What happened then?

A: Terry just said, "Well, be careful going home. I'll see you at the beach tomorrow." Fran and Lee both said goodbye and headed toward the patio doors. On their way out, Lee stumbled on the step of the patio doors - didn't fall or anything - but stumbled.

Terry and I went out back to make sure we had cleaned up all the beer bottles. Jody must have been waiting out front. I'd seen Jody drinking beer earlier and Jody looked real drunk to me. Jody couldn't even stand up without leaning against something.

Anyway, I couldn't really see the car because of the trees, but I heard the tires squealing when they left. I left about twenty minutes later. That's when I saw the empty vodka bottle. I thought I heard sirens on my way home, but I didn't find out about the accident until Terry saw me Monday night at the market.

Q: What did Terry tell you?

A: Terry said the police had come by the house about 2:00 a.m., a state trooper actually. Terry said the trooper spoke with Mr. and Mrs. Wilson and told them Lee had lost control of the car and flipped over. The trooper wanted to know if the kids had been drinking at the party. Jody had told the trooper they had been drinking and there were two beer bottles found inside the car, one empty and one full. Terry pretended to be

sleeping when the trooper was there. Terry said the trooper found the vodka bottle and some empty beer bottles. Terry was all upset because Terry thought Mr. and Mrs. Wilson could be in trouble. Terry said the trooper was coming back to tape record a statement.

Q: How did the trooper get in touch with you?

A: I called the highway patrol when I found out Fran was paralyzed. I heard people were going to lie. They didn't want Lee to miss out on going to college and if no one said anything about drinking at the party, Terry and Terry's parents wouldn't be in any trouble. I thought it was important to tell the truth. I think Terry's parents should have to help Fran's parents with all the hospital bills. Lee was wrong, and should pay for it, too.

Q: Did you see Fran drinking anything that night?

A: Not that I saw.

Q: Did Fran act drunk or anything unusual?

A: Not that I could tell. Fran was happy and kidding around and everything - but not drunk. No way was Fran drunk.

Q: Thank you. I don't have anymore questions at this time.

DEPOSITION OF JODY RIDER

P R O C E E D I N G S

DIRECT EXAMINATION

Good afternoon, my name is LAURIE CHANE. I am an assistant state attorney. Your names was provided by the attorney for Lee Appleman as having information relating to the accident which occurred on June 30, 1996. Before we begin, let me advise you to pay careful attention before answering my questions. Answer all of my questions truthfully. If you don't know the answers, tell us you don't know the answer. If you are guessing something such as time or space tell me it is a guess. Before we begin do you have any questions?

A: No.

Q: O.K. then, state your full name and occupation.

A: Jody Rider, I am employed part-time at Sunshine Bar & Grill as a waiter. I'm taking classes at the Junior College too.

Q: Jody, as I understand you were a guest at Terry Wilson's party on June 29th.

A: Yes.

Q: What time did you arrive?

A: I think I got there around 8:00 P.M., but I'm not really sure because I'd been with some friends before that.

Q: Jody, did you have anything alcoholic to drink

that night?

A: I had a couple of beers.

Q: How many is a couple?

A: Well I had one before I got to Terry's house and I had one more, maybe two more while I was at the party.

Q: Were you drinking beer out of a bottle, can or keg?

A: Just cans.

Q: Where did you get the beer from?

A: It was at the party. I think Terry's parents bought it but I'm not sure. There was a styrofoam cooler out in the back yard.

Q: Before we go any further, let me ask you about Lee. How long have you known Lee?

A: We've gone to school together since 5th grade. In fact, we had signed up to be housemates at the university in the fall, but all that fell through after the accident.

Q: So you guys are pretty good friends?

A: Oh yea, we're real close.

Q: How about Fran, how would you describe your relationship?

A: Fran hangs out with the same people but...well, I don't know...Fran is O.K., I guess. I personally didn't spend much time with Fran.

Q: You seem hesitant.

A: Well, I just think Fran is trying to blame everyone else. I mean, I'm real sorry Fran is paralyzed and Lee and I walked away, but the whole thing was Fran's fault.

Q: How do you mean?

A: Fran had been drinking a lot and you know when someone is drinking they get a lot of false courage. Well, Fran was just egging Lee to drive faster and faster.

Q: Is that all?

A: No. Lee was trying to slow down at the curve and drive carefully, but it was Fran who grabbed the wheel and caused the car to flip.

Q: Did you actually see Fran grab the steering wheel?

A: Well, yeah. Fran screamed for Lee to watch out for the dog. I guess, Fran didn't think Lee was going to swerve in time, and grabbed the wheel. Fran could have killed all of us.

Q: How about Lee, was Lee drinking alcohol that night?

A: I know people are saying that Lee was drunk. But you know I have known Lee for a long time. Lee did not seem drunk to me. I wouldn't have gotten in the car if I thought Lee was too drunk to drive.

Q: Did you see Lee drinking anything that night?

A: I definitely didn't see Lee with any beer. Maybe Lee had some Vodka that night, but only very little. There was only a small amount in the bottle and Lee never even finished what was poured in the cup because of the accident.

Q: How fast was the car going at the time of the accident?

A: I don't know, not real fast. I never saw the speedometer. I was sitting in the back.

Q: Were you wearing a seat belt?

A: Yes.

Q: Were Lee and Fran wearing seat belts?

A: I think Lee was, but Fran wasn't. Lee told Fran to put the seat belt on, but like I said, Fran was drunk and wouldn't listen.

Q: Can you remember anything else about the accident?

A: I think Lee slammed on the brakes when Fran grabbed the wheel. Other than that, I just remember the car rolling over and when it stopped, Fran was gone. Lee helped me out because I couldn't get the seat belt loose. As far as I'm concerned, Lee saved my life because the car could have caught fire or something.

Q: You said something about a dog. Did you see the dog?

A: Yes I did, through the passenger window.

Q: What color was it?

A: It looked like a Collie or something tan and white.

Q: Do you know Pat Clementz?

A: Yes I do. Pat and I don't get along ever since that argument we had last year. Pat accused me of cheating on a math test and it was a lie. Lee had to separate us and somehow Pat fell and broke a tooth.

Q: Do you know if Lee brought any beer or Vodka to the party?

A: No I don't. Lee was at the party already when I got there. But I doubt it. Lee isn't old enough to buy beer.

Q: I don't have any more questions.

TAPED STATEMENT of TERRY WILSON

Q: Today's date is Tuesday, July 2, 1996. The time is 3:15 p.m. This is Trooper Dale Broadside. Investigating an accident which occurred at 12:06 a.m. on Sunday, June 30th. Your name is?

A: Terry Wilson

Q: How old are you?

A: 18

Q: Terry, did you have a party the evening of Saturday, June 29, 1996.

A: Yes

Q: Did Lee Appleman, Jody Rider and Francis Blameless attend your party?

A: Yes.

Q: What time do you remember Lee getting to the party?

A: Around 8:00 p.m. I didn't actually see Lee drive up, but I would say 8:00 p.m. or a little after.

Q: Did Lee act unusual?

A: No. What do you mean?

Q: Was Lee under the influence of alcohol?

A: Not that I could tell.

Q: Did Lee drink any alcohol at the party?

A: Not that I saw. If anybody was drinking they didn't do it around me. My parents told me, " No drugs

or alcohol!", or I would be grounded for the summer.

Q: So you didn't serve any beer, wine, or other alcoholic beverages to your guests.

A: No! I did not.

Q: Do you know why there was a vodka bottle and beer bottles out by the street in you front yard?

A: I have no idea how they got there. Somebody could have had some in their car and I didn't know about it.

Q: What about Lee? Did Lee bring any beer or vodka to the party?

A: Lee could have. I don't know. Its possible. I didn't see any.

Q: We found two beer bottles in the wreckage. Also I located a 12 oz. plastic cup. We talked to Jody and Jody said they had been drinking at your house.

A: I didn't ask anyone to bring alcohol to my party. If they did, it was without my permission. If Jody was drinking, Jody didn't get it from me. Ask Jody where it came from. Jody is a liar if Jody says they got beer from me!

Q: What time did Lee leave the party?

A: It was almost midnight. Lee was one of the last to leave.

Q: How did Lee act at that time.

A: Lee was happy. Lee is always happy, just a real nice person, you know. Lee's parents had bought a mustang for graduation and Lee had taken some of us for a ride earlier. Fran needed a ride home and Lee offered a ride in the new car.

Q: Did Lee have any trouble walking or talking?

A: No. Lee and Fran were both fine when they left. They were talking and walking fine.

Q: Did you hear or see anything unusual when they left?

A: No. As a matter of fact I walked them to the door and watched them get in the car. Jody was sitting in the back seat. I saw Jody when they opened the doors and the light came on inside. I didn't see anything wrong with Lee's driving. I watched all the way to the stop sign at the corner. That's the last time I saw them.

Q: Did you notice if Lee or Fran were carrying anything when they left?

A: Lee had a plastic cup. I figured it was soda. I don't remember Fran having anything.

Q: Did you ride in the car that night?

A: Yes I did.

Q: How was the driving?

A: Ok. I don't remember any problems.

Q: Did Lee show off at all? Squeal tires,

speeding?

A: No. When I went for the ride, Lee's driving was fine. No speeding or anything. Lee was real excited about that car and was real careful with it.

Q: What time do you think it was?

A: Between 9:30 and 10:00 p.m. I'm not sure.

Q: Was anyone else there when Lee left?

A: My parents, but they were asleep. I can't remember anyone else.

Q: Is there anything else you can tell me?

A: No there isn't. I don't know what happened. Lee and Fran were my friends. I'm just sorry this happened.

Q: Have you talked to anyone about what happened that night?

A: No... except my parents. I know they're real mad. They said if I was lying about any drinking at the party I'd be grounded and they could be sued. I told them the truth just like I told you.

Q: I don't have any other questions at this time.

Naumowicz v. State
562 So.2d 70 (1st DCA 1990)

Where the evidence presented by the State included testimony that the defendant consumed a large quantity of beer prior to the accident, that defendant went through a stop sign, that a blood sample taken one and half hours after the accident registered a blood alcohol level of .154%, and retrograde extrapolation placed the defendants blood alcohol level in a range of .08 to .17% at the time of the accident, the jury could reasonably infer that defendants faculties were impaired at the time of the accident due to alcohol consumption. (note: at time of the accident Florida Law required a .10 blood alcohol level for presumption of impairment or unlawful blood alcohol. That has been reduced to today's .08.)

State v. Norstrom
613 So.2d 437 (Fla. 1993)

Evidence that the defendant consumed alcoholic beverages on night of incident was relevant to prosecutions charge of reckless driving in case of manslaughter by culpable negligence.

Sizensky v. State
588 So.2d 287 (2DCA 1991)

The evidence was insufficient to convict of DUI manslaughter where two hours after the accident the Defendant had a blood alcohol level of .13 and the evidence indicated the defendant had ingested alcohol so close to the time of the accident and that the toxicologist could only give a range of from .04 to .22%. Furthermore, there was insufficient evidence to convict on the theory of impairment where there was no testimony that the Defendant's breath smelled of alcohol, that his eyes were bloodshot, that his speech was slurred or that he was unsteady on his feet. The evidence indicated that the defendant applied his brakes and started skidding 123 feet before the point of impact and continued to apply his brakes for another 93 feet coupled with the lack of other evidence negates a finding of impairment.

Cox v. State
618 So.2d 291 (2DCA 1993)

Simple driving under the influence (DUI) is necessarily lesser included offense of DUI/serious bodily injury and instruction on that offense must be given regardless of degree of proof supporting conviction for greater offense.

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PUB.DEF.OFF. ID:904-521-4394 OCT 16'96 15:30 No.003 P.02

Goodwin v. State
610 So.2d 31 (4DCA 1992)

Defendant was not entitled to a judgment of acquittal on an unlawful blood alcohol level manslaughter conviction where the State's expert testified on direct examination that the defendant's blood alcohol level at the time of the incident was in a range of .12 to .137 based upon two samples of blood taken from the defendant approximately on hour and fifteen minutes and two and one half hours after the incident. On cross-examination in response to a defense hypothetical testified that appellant's blood alcohol level could have been below .10 at the time of the accident.

Logan v. State
592 So.2d 295 (5DCA 1991)

Instructing jury on 12 civil traffic infractions (including speeding, open container of alcohol, obstruction of streets or highways, failure to stop or yield right of way) allegedly committed by defendant during hours and minutes before collision giving rise to charges of culpable negligence manslaughter constituted reversible error where several of the violations took place a substantial physical and temporal distance from the accident and none were of the character to evince gross, flagrant disregard for human life and only speeding and running the stop sign could have had any direct causal relationship to these deaths. The commission of traffic infraction is not sufficient without more, to support a conviction for culpable negligence. Culpable negligence depends on the extreme character of the conduct itself, not on its mere illegality.

Parker v. State
590 So.2d 1027 (1DCA 1991)

Proof of simple negligence is sufficient to support a conviction for driving under the influence manslaughter.

Quinn v. State
549 So. 2d 208 (2DCA 1989)

The trial court erred in refusing to permit the defendant to present expert testimony which refuted the State's toxicologist who testified that the defendant had an unlawful blood alcohol level at the time of the accident. The defendant's expert would have testified that the tests performed by the State were flawed and that his test results indicate the defendant's blood alcohol level could have been below .10 at the time of the accident. The trial courts determination that the defense expert was inexperienced went to his credibility and not the admissibility of the testimony.

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PUB.DEF.OFF. ID:904-521-4394 OCT 16'96 15:31 No.003 P.03

Frazier v. State
559 So.2d 1121 (Fla. 1990)

Victim's not wearing seatbelt was not defense to driving under influence manslaughter.

Miller v. State
597 So.2d 767 (Fla. 1992)

The issue presented was whether a blood alcohol level of .14 one hour and twenty minutes after the driver was stopped was admissible in evidence to prove the offense of driving under the influence of alcohol where the state's expert testified that the .14 would not be the blood alcohol reading at the time of the driving, was unable to testify what the blood alcohol level was at the time of driving and conceded that the blood alcohol level could have been below .10 at the time of the offense The Supreme Court of Florida held that the evidence was admissible, "... [t]he inability of the State to 'relate back' evidence to the time the defendant was driving the vehicle is a question of credibility and weight of the evidence, not of admissibility, provided the test is conducted a reasonable time after the defendant is stopped."

The Court went on to indicate, "as a general rule, we believe a test is conducted at an unreasonable time if the results of that test do not tend to prove or disprove a material fact or if the probative value of the evidence is outweighed by its potential to cause prejudice and confusion."

Haas v. State
597 So. 2d 770 (Fla. 1992)

The admission of blood test results of .11% taken one hour and twenty minutes after an accident standing alone constitutes sufficient circumstantial evidence upon which the trier of fact may (but is not required to) convict a driver of driving under the influence under either the theory of impairment or driving with an unlawful blood alcohol level. Again, at the time of the offense the unlawful blood alcohol level was .10 and the State expert could not testify that the driver was above a .10 at the time of driving.

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PUB.DEF.CFF. ID:904-521-4394 OCT 16'96 15:32 No.003 P.04

316.193 Driving under the influence; penalties

(1) A person is guilty of the offense of driving under the influence and is subject to punishment as provided in subsection (2) if such person is driving or in actual physical control of a vehicle within this state and:

(a) The person is under the influence of alcoholic beverages, any chemical substance set forth in s.877.111, or any substance controlled under chapter 893 when affected to the extent that the person's normal faculties are impaired; or

(b) The person has a blood or breath alcohol level of .08 percent or higher

(3) Any person:

(a) Who is in violation of subsection (1);

(b) Who operates a vehicle; and

(c) Who, by reason of such operation, causes:

1. Damage to the property or person of another is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s.775.083.

2. Serious bodily injury to another, as defined in s. 316. 1933, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or 775.083, or s. 775.084.

3. The death of any human being is guilty of DUI manslaughter, a felony of the second degree, punishable as provided in s. 775.082, s 775.083 or 775.084.

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FLORIDA EVIDENCE CODE

The following specific excerpts from the Florida Evidence Code are applicable to the 1997 case materials. These sections may be in addition to the standard 1997 Mock Trial Simplified Rules of Evidence and may be used in case preparation and delivery.

SECTION 90.608 -- WHO MAY IMPEACH

Any party, including the party calling the witness may attack the credibility of a witness by:

(1) Introducing statements of the witness which are inconsistent with his present testimony.

(2) Showing that the witness is biased.

(3) Attacking the character of the witness in accordance with state mock trial rules of evidence and procedure.

(4) Showing a defect of capacity, ability or opportunity in the witness to observe, remember, or recount the matters about which (s) he testified.

(5) Proof by other witnesses that material facts are not as testified to by the witness being impeached.

SECTION 90.612 -- MODE AND ORDER OF INTERROGATION AND PRESENTATION

(2) Cross-examination of a witness is limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in its discretion, permit inquiry into additional matters.

(3) Except as provided by rules of court or when the interests of justice otherwise require:

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(a) A party may not ask a witness a leading question on direct or redirect examination.

(b) A party may ask a witness a leading question on cross-examination or re-cross-examination.

SECTION 90.613 -- REFRESHING THE MEMORY OF A WITNESS

When a witness uses a writing or other item to refresh his memory while testifying, an adverse party is entitled to have such writing or other item produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce it, or, in the case of a writing to introduce those portions which relate to the testimony of the witness, in evidence.

SECTION 90.614 -- PRIOR STATEMENTS OF WITNESSES

(1) When a witness is examined concerning his prior written statement or concerning an oral statement that has been reduced to writing, the court, on motion of the adverse party, shall order the statement to be shown to the witness or its contents disclosed to him.

(2) Extrinsic evidence of a prior inconsistent statement by a witness is inadmissible unless the witness is first afforded an opportunity to explain or deny the prior statement and the opposing party is afforded an opportunity to interrogate him on it, or the interests of justice otherwise require. If a witness denies making or does not distinctly admit that he had made the prior statement, extrinsic evidence of such statement is admissible. This subsection is not applicable to admissions or a party-opponent.

SECTION 90.701 -- OPINION TESTIMONY OF LAY WITNESSES

If a witness is not testifying as an expert, his testimony about what he perceived may be in the form of inference and opinion when:

(1) The witness cannot readily, and with equal accuracy and adequacy, communicate what he has perceived to the trier of fact without testifying in terms of inferences or opinions and his use of inferences or opinions will not mislead the trier of fact to the prejudice of the objecting party; and

(2) The opinions and inferences do not require a special knowledge, skill, experience or training.

SECTION 90.702 -- TESTIMONY BY EXPERTS

If scientific, technical or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge skill, experience, training, or education, may testify about it in the form of an opinion; however, the opinion is admissible only if it can be applied to evidence at trial.

SECTION 90.703 -- OPINION ON ULTIMATE ISSUE

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it includes an ultimate issue to be decided by the trier of fact.

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SECTION 90.704 -- BASIS OF OPINION TESTIMONY BY EXPERTS

The facts or date upon which an expert bases an opinion or inference may be those perceived by, or made known to, her or him at or before trial. If the facts or date are of a type reasonably relied upon by experts in the field to support the opinion expressed, the facts or data need not be admissible in evidence.

SECTION 90.803 -- HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL

The following are not inadmissable as evidence, even though the declarant is available as a witness:

(1) **SPONTANEOUS STATEMENT** -- A spontaneous statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, except when such statement is made under circumstances that indicate its lack of trustworthiness.

(2) **EXCITED UTTERANCE** -- A statement or excited utterance relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3)**THEN EXISTING MENTAL, EMOTIONAL, OR PHYSICAL CONDITION**

(a) A statement of the declarant's then existing state of mind, emotional, or physical condition, including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health, when such evidence is offered to:

1. Prove the declarant's state of mind, emotion, or physical sensation at that time or at any other time when such state is an issue in the action.

2. Prove or explain acts of subsequent conduct of the declarant.

(b) However, this subsection does not make admissible:

1. An after-the-fact statement of memory or belief to prove the fact remembered or believed, unless such statement relates to the execution, revocation, identification, or terms of declarant's will.

2. A statement made under circumstances that indicate its lack of trustworthiness.

(4) STATEMENTS FOR PURPOSE OF MEDICAL DIAGNOSIS OR TREATMENT

Statements made for purposes of medical diagnosis or treatment by a person seeking the diagnosis or treatment by a person seeking the diagnosis or treatment, or made by an individual who has knowledge of the facts and is legally responsible for the person who is unable to communicate the facts, which statements describe medical history, past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof, insofar as reasonably pertinent to diagnosis of treatment.

(5) RECORDED RECOLLECTION

A memorandum or record concerning a matter about which a witness once had knowledge, but now has insufficient recollection to enable him to testify fully and accurately, known to have been made by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. A party may read into evidence a memorandum or record when it is admitted, but no such memorandum or record is admissible as an exhibit unless offered by an adverse party.

(6) RECORDS OF REGULARLY CONDUCTED BUSINESS ACTIVITY

(a) A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinion, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity and if it was the regular practice of that business to make such a memorandum, report, record, or date compilation, as shown by the testimony of the custodian or other qualified witness, unless the sources of information or other circumstances show lack of trustworthiness. The term "business" as used in this paragraph includes a business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(b) No evidence in the form of an opinion or diagnosis is admissible under paragraph (a) unless such opinion or diagnosis would be otherwise admissible if the person whose opinion is recorded were to testify to the opinion directly.

(7) FAMILY RECORDS

Statements of fact concerning personal or family history in family Bibles, charts, engraving in rings, inscriptions on family portraits, engraving on urns, crypts or tombstones, or the like are admissible under certain circumstances.

(8) ADMISSIONS

A statement that is offered against a party and is:

(a) His own statement in either an individual or a representative capacity;

(b) A statement of which he has manifested his adoption or belief in its truth;

(c) A statement by a person specifically authorized by him to make a statement concerning the subject;

(d) A statement by his agent or servant concerning a matter within the scope of the agency or employment thereof, made during the existence of the relationship.

*****NOTE***: See also Florida High School Mock Trial Competition Rules of Evidence and Procedure.**

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RULES OF THE COMPETITION

RULE I. Team Composition/Presentation

A. The competition is open to students currently enrolled in grades 9-12 in Florida schools. All students on a team must be enrolled in the same school in the district they are representing.

B. Teams shall consist of six (6) primary members: three attorneys and three witnesses. Teams may have two additional members to serve as alternates. Participation and duties of alternates shall be at the discretion of the team coach.

C. Students may switch roles for different rounds of trials (i.e. a student may be an attorney for the defense and a witness for the plaintiff during separate rounds).

D. Each team must be fully prepared to argue both sides of the case. (Prosecution/Plaintiff and Defense/Defendant) using six team members.

E. Students of either gender may portray the role of any witness. The competition will strive to make roles gender neutral. However, some cases will warrant a specific gender role. In such cases, students of either gender may portray the role but the gender of the witness may not change from the case as presented.

F. Team Roster/"Roll" Call

Copies of the Team Roster form must be completed and returned prior to arrival at the competition site. Teams should be identified by the code assigned at registration.

Before beginning a trial, teams will be asked to prepare a "Roll Call" list to identify the students participating in each round and their corresponding roles. No information identifying team origin should appear on the list.

RULE II. The Case

A. The case may consist of any or all of the following stipulations, documents, narratives, exhibits, witness statements, etc.

B. The stipulations (and fact statements, if any) may not be disputed at the trial. Witness statements may not be altered.

C. All witnesses must be called.

RULE III. Trial Presentation

A. The trial proceedings will be governed by the Florida Mock Trial Simplified Rules of Evidence. Other more complex rules may not be raised at the trial. Questions or interpretations of these rules are within the discretion of the State Mock Trial Advisory Committee, whose decision is final.

B. Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection outside the scope of the problem.

If, on cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness' statement or affidavit and does not materially affect the witness' testimony.

Adding facts which are inconsistent with the witness statement or with the Stipulated Facts and which would be relevant with respect to any issue in the case is not permitted. Examples include, but are not limited to (a) creating a physical or mental disability, (b) giving a witness a criminal or bad record when none is suggested by the statements, (c) creating facts which give a witness standing as an expert and (d) materially changing the witness's profession, character, memory, mental or physical ability from the witness statements by

testifying to "recent changes."

C. If certain witnesses are stipulated to as experts, their expert qualifications may not be challenged or impeached by the opposing side. Their testimony concerning the facts of the case, however may be challenged.

D. On direct examination, the witness is limited to the facts given. If a witness testifies in contradiction to the facts given in the witness statement, that testimony may be impeached on cross-examination by the opposition through the correct use of the affidavit. The procedure is outlined in the Rules of Evidence.

E. On cross-examination, no restrictions will be made on the witness or the cross-examination, except that the answer must be responsive and the witness can be impeached.

If the attorney who is cross-examining the witness asks a question, the answer to which is not contained in the stipulations or affidavit then the witness may respond to that question with any answer as long as the answer does not contradict or materially change the affidavit.

If the answer by the witness is contrary to the stipulations or the affidavit, the cross-examination attorney may impeach the witness.

F. Use of voir dire examination of a witness is not permitted.

RULE IV. STUDENT ATTORNEYS

A. Team members are to evenly divide their duties. Each of the three attorneys will conduct one direct and one cross; in addition, one will present the opening statements and another will present closing arguments. In other words, the attorney duties for each team will be divided as follows:

1. Opening Statements
2. Direct Examination of Witness #1
3. Direct Examination of Witness #2
4. Direct Examination of Witness #3
5. Cross Examination of Witness #1
6. Cross Examination of Witness #2

7. Cross Examination of Witness #3
8. Direct Examination of State's Rebuttal Witness
9. Cross Examination of State's Rebuttal Witness
10. Closing Argument (including Rebuttal) (See Rule 12)

*Note: In this year's case, the prosecution is allowed to call one rebuttal witness. The defense will have the opportunity to cross examine the rebuttal witness. The defense will NOT be allowed to call a rebuttal witness.

At the close of the defense's case, the presiding judge will ask the prosecution if they would like to call a rebuttal witness. At the State's option, one witness may be selected for rebuttal testimony. That witness must be announced to the presiding judge before the rebuttal testimony is presented. One minute of direct testimony and one minute of cross examination will be allowed. For this year's case, the attorney for the rebuttal direct and cross will be at the teams' discretion.

Opening statements must be given by both sides at the beginning of the trial.

The attorney who will examine a particular witness on direct examination is the only person who may make the objections to the opposing attorney's questions of that witness' cross examination, and the attorney who will cross-examine a witness will be the only one permitted to make objections during the direct examination of that witness.

Each team must call the three witnesses listed in the case materials. Witnesses must be called only by their own team and examined by both sides. Witnesses may not be recalled except as noted in this year's rebuttal witness testimony.

B. Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying during the trial.

C. To permit judges to hear and see better, attorneys will stand during opening and closing statements, direct and cross-examinations, all objections, and **whenever addressing the presiding** judge. Students may move from the podium only with permission of the presiding judge.

RULE V. SWEARING OF WITNESSES

The Presiding judge will indicate that all witnesses are assumed to be sworn.

RULE VI. CASE MATERIALS

Students may read other cases, materials, and articles in preparation for the mock trial. **However, students may cite only the case materials given, and they may introduce into evidence only those documents given in the official packet.** In addition, students may not use, even for demonstrative purposes, any materials which are not provided in the official packet. The following are not permitted: props, costumes, and/or enlargements.

RULE VII. TRIAL COMMUNICATION

Instructors, alternates, and observers shall not talk to, signal, communicate with, or coach their teams during trial. This rule remains in force during any recess time which may occur. Team members may, among themselves, communicate during the trial; however, no disruptive communication is allowed.

Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Only team members participating in this round may sit inside the bar.

RULE VIII. TRIAL START TIME

The starting time of any trial will not be delayed for longer than ten minutes unless approved by the Mock Trial Coordinator. Incomplete teams will have to begin without their other members or with alternates.

RULE IX. CONDUCT/ATTIRE

All participants are expected to demonstrate proper courtroom decorum **and display collegial sportsmanlike conduct. Appropriate courtroom attire is required.** Adherence to the Code of Ethics is expected of all participants.

RULE X. VIDEOTAPING/PHOTOGRAPHY

Cameras and recording devices are permitted in **certain** courtrooms, however, the use of such equipment may not be disruptive **and must be approved in advance of the competition by the FLREA**. When one team

requests to videotape during a trial, the opposing team must be consulted and their permission granted prior to taping.

RULE XI. WITNESSES

Witnesses are to remain in the courtroom during the entire trial.

RULE XII. JURY TRIAL

For purposes of the competition, students will assume this is a jury trial. The scoring judges will act as the jury. The presiding judge is the trial judge. Students should address the scoring judges and the presiding judge.

RULE XIII. VIEWING A TRIAL

Team members, alternates, attorney-coaches, teacher-sponsors, and any other persons directly associated with a mock trial team, except for those authorized by the State Advisory Board, are not allowed to view **other** teams in competition, so long as their team remains in the competition. Judges should maintain order in the courtroom. If observers are disorderly, they will be asked to vacate the premises.

RULE XIV. DECISIONS

ALL DECISIONS OF THE JUDGES ARE FINAL.

RULE XV. TIME LIMITS

A. The trial sequence listed below gives the maximum time limits per segment. The time not used in one segment may not be applied to any other segment.

*	Opening Statements	5 minutes per side
*	Prosecution's Direct Examination	6 minutes p/witness
*	Defense Cross-Examination	5 minutes p/witness
*	Prosecution's Re-Direct (optional)	2 minutes p/witness
*	Defense Re-cross (optional)	2 minutes p/witness
*	Defense Direct Examination	6 minutes p/witness
*	Prosecution's Cross - Examination	5 minutes p/witness

*	Defense Re-Direct (optional)	2 minutes p/witness
*	Prosecution's Recross (opt.)	2 minutes p/witness
*	Optional Prosecution Rebuttal	
	*Direct Examination	1 minute
	*Cross Examination	1 minute
*	Prosecution's Closing Argument	4 minutes, plus 1 minute rebuttal (See below)
*	Defense's Closing Argument	5 minutes
*	Prosecution's Closing Rebuttal	1 minute

None of the foregoing may be waived **except the optional items,** nor the order changed.

The Prosecution/Plaintiff gives the opening statement first. The Prosecution/Plaintiff gives the closing argument first; the Prosecution/Plaintiff may reserve a portion of its closing time for a rebuttal. The Prosecution/Plaintiff's rebuttal is limited to the scope of the Defense's closing argument.

Attorneys are not required to use the entire time allotted to each part of the trial. Time remaining in one part of the trial may not be transferred to another part of the trial.

B. Timing will halt during objections and responses to objections. **Timing will not halt during the admission of documentary evidence, unless there is an objection by opposing counsel**. In the interest of fairness, time extensions may be granted at the discretion of the presiding judge. All objections should be argued in open court, not at the bench. Timing will resume after the judge has ruled on the objection. Students should avoid the use of tactics to "run out the clock" during the admission of evidence. Judges will be instructed to consider this in the Team Ethics scoring category.

C. A "timekeeper" will be provided and will keep the official time of the trial. The timekeeper's role will be expanded to time the 10 minute debrief session for each side. This will help ensure that the schedule is maintained. The timekeeper will announce to the court when time has expired in each of the separate segments of the trial.Further, the timekeeper will bring a calculator to each courtroom and double check the scores of scoring judges to ensure **no ties.** Judges will be instructed NOT to tie the teams during any round. This will eliminate the issue of vote assignments during ties.

D. Teams are permitted to have their own timekeeping aids, such as cards marked with 3 minutes, 2 minutes, 1 minute, 30 seconds, and time. However, this will *not* be considered the official time of the trial. Team timekeepers must not interfere with the trial or obstruct the view of any witness.

RULE XVI. JUDGING

A. The **presiding** judge will render a decision based on the legal merits of the case at the end of the trial. This will be on the legal merits of the case and the applicable law. Finding in favor of prosecution/defense does **not** determine which team advances in the competition. The presiding judge may announce his/her merits decision; *but* ***should NOT*** *announce the mandatory performance vote.*

B. The **scoring** judges (jury) will utilize prepared score sheets to **rate** the quality of the students' **performances** in the trial. The judges will be instructed to rate the performance of all witnesses and attorneys on the team. Judges will **not** announce the **presentation decision**. Judges should make field notes on students' performances during the trial.

C. Judges will be instructed not to tie teams in any round. In the event scores are computed by the judges and errors are found in the computations, scoreroom staff will correct the errors and the correct scores will be the official scores after adding the individual categories/assessments. The scoreroom will be staffed by an independent accounting firm.

D. To enhance the students' learning experience, the judges will be instructed to give each team an **oral critique** after their deliberation. The decision on **which team** gave the better performance will **not** be given to the participants. Students and their coaches will have the opportunity to meet informally with all the judges for 20 minutes (10 minutes per team) immediately following the trial. Scoresheets should be completed **BEFORE** the debriefing. Debriefing sessions will be timed by the timekeepers to avoid lengthy debriefs.

E. **DECISIONS OF THE JUDGES ARE FINAL.**

F. The **TEAM ETHICS** category will score students on the standards recognized in the Code of Ethical Conduct.

RULE XVII. DISPUTE SETTLEMENT

A. **Reporting a Rules Violation/Inside the Bar**

If any team has serious reason to believe that a material rules violation has occurred during a trial round, one student attorney member of the team shall communicate that a dispute exists to the presiding judge immediately after the trial is over and before the critique begins. The scoring judges will be excused from the courtroom, but should remain in the vicinity.

B. The presiding judge will ask that both teams remain in the courtroom. A dispute form shall be completed by the student attorney to record in writing the nature of the dispute. The student attorney may communicate with other student attorneys and witnesses on the team before preparing the form. No more than 3 minutes may be taken to complete the form.

At no time in this process may **team sponsors or coaches communicate** or consult with the students. Only student attorneys may invoke the dispute procedure.

C. **Dispute Resolution Procedure**

The presiding judge will review the written dispute and determine whether the dispute should be heard or denied. If the dispute is denied, the judge will record the reasons for this, announce her/his decision to the Court, retire to complete his/her score sheet (if applicable), and turn the dispute form in with the score sheets. If the judge feels the grounds for the dispute merit a hearing, the form will be shown to opposing student counsel for their written response. After the team has recorded its response and transmitted it to the judge, the judge will ask each team to designate a spokesperson. After the spokespersons have had time (not to exceed three minutes) to prepare their arguments, the Judge will conduct a hearing on the dispute, providing each team's spokesperson three minutes for a presentation. The spokespersons may be questioned by the judge. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will adjourn the court and retire to consider her/his ruling on the dispute. The judge will make a final decision as to whether or not a rules violation has occurred. That decision will be recorded in writing on the dispute form. The judge is **NOT** required to announce his/her decision to students.

D. **Effect of Violation on Score**

If the presiding judge determines that a substantial rules violation has occurred, the judge will inform the **scoring** judges of the dispute and provide

a summary of each team's argument. The scoring judges will consider the dispute before finalizing their scores. The dispute may or may not affect the final decision, but the matter will be left to the discretion of the scoring judges. All decisions of the judges **ARE FINAL**.

RULE XVIII. REPORTING OF RULES VIOLATION/OUTSIDE THE BAR

Disputes which (a) involve people other than student team members and (b) occur outside the bar only during a trial round may be brought by teacher or attorney-coaches exclusively. Such disputes must be entered on a complaint form and turned in to the registration area. The dispute will be reviewed by the Mock Trial Coordinator and/or Advisory Committee for appropriate action, if needed. Decisions and actions of the coordinator and/or committee are **FINAL.**

RULE XIX. SCORING/*RANKINGS*

Scoresheets will be completed individually by scoring judges. The presiding judge will cast a **mandatory** performance vote. Judges may not inform students of scoresheet results.

Individual assessment categories *including team ethics and team performance* shall be judged on a 1-10 scale *by scoring judges only.*

The team with the highest points *from any one scoring judge wins the vote from that scoring judge. The presiding judge will issue a mandatory performance vote, but no points for each round.*

Teams wil be ranked first by total votes received by judges during all rounds. In the event of a tie of total votes, the scoring judges' total points will determine the final outcome/placement.

In the event of a mathematical error in tabulation by scoring judges, scoreroom staff will enter the CORRECT tabulation of the scores.

RULE XX. RANDOM MATCHING

The Florida Mock Trial Competition uses a *random* matching system.

RULE XXI. ELIGIBILITY

A. All students on a team must be enrolled in the same public or private school in the district for which they are competing.

B. Each county/school district may send only one team to compete in the Florida High School Mock Trial Championship.

C. The host state director reserves the right to enlist participation from each district.

D. All participating teams are to have had competition/ practice experience prior to the state competition.

E. **All teams are strongly encouraged to utilize attorneys as coaches or mentors. Contact the Association if you do not have a local coach.**

RULE XXII. AWARDS

Trophies will be awarded to the top five teams. **Four** best witness awards and **four** best attorney awards will also be presented. Additionally, two Professionalism trophies will be awarded based upon team recommendations. Student certificates and school plaques will be presented to all participants.

RULE XXIII. ROUNDS

Each team will play prosecution twice and defense twice throughout the state competition. A semi-final round will be conducted between the top four teams followed by a final round between the top two teams.

INTERPRETATION OF STATE COMPETITION RULES

All rules of competition for the Florida High School Mock Trial Championship, as set forth above, are subject to the interpretation of the Advisory Committee of the Florida Mock Trial Championship. No exceptions are permitted at the competition site unless approval has been given by the Advisory Committee **prior to** the competition. The Advisory Committee and/or State Mock Trial Coordinator/Director will serve as the final arbiter at the competition site.

1997 FLORIDA MOCK TRIAL

SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE

In American courts, elaborate rules are used to regulate the kind of proof (i.e., spoken testimony by witnesses or physical evidence) that can be used in trials. These rules are designed to ensure that both parties receive a fair hearing. Under the rules, any testimony or physical objects deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial may be kept out of the trial.

If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. Usually, the attorney stands and says, "I object, your honor," and then gives the reason for the objection. Sometimes the attorney whose questions or actions are being objected to will then explain why he or she thinks the rule was not violated. The judge then decides whether the rule has been violated and whether the testimony or physical items must be excluded from the trial.

Official rules of evidence are quite complicated. They also differ depending on the kind of court where the trial occurs. For purposes of this mock trial competition, the rules of evidence you will use have been made less complicated than those used in actual courts. The ideas behind these simplified rules are similar to actual rules of evidence.

A. Witness Examination/Questioning

1. Direct Examination (attorneys call and question their own witnesses using direct as opposed to leading questions).

   Elyse Roberts is called by her attorney to explain the events leading up to her filing suit against Potomic County.

   Ms. Roberts, where do you work? How long have you worked there? Please describe your working relationship with Mr. Kevin Murphy during the first month of employment. Why did you meet with your supervisor, Fran Troy? Did you seek advice from a therapist during this time?

Form of questions:

Questions such as the above do not suggest the answer. Instead, they introduce a witness to a particular area of importance, leaving the witness free to relate the facts. Obviously, the witness will have been prepared to answer such questions in a particular way. But the question by its terms does not "lead" to the answer.

a. **LEADING QUESTIONS**

A LEADING QUESTION is one which suggests the answer. It does not simply call the witness' attention to a subject. Rather, it indicates or tells the witness what the answer should be about that subject. LEADING QUESTIONS are not permitted on direct examination, but questions on cross-examination should be leading. Examples follow:

1. Mrs. Roberts, despite repeated invitations, you chose not to participate in office social functions, correct?

2. Isn't it true, that due to all the stress from work you decided to go to therapists?

These questions are obviously in contrast to the direct examination questions in the preceding section. Leading questions suggest the answer to the witness. This is not proper as direct examination when a party is questioning its own witness.

b. **NARRATION:**

While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information. The questions must not be so broad that the witness is allowed to wander or "narrate" a whole story. Narrative questions are objectionable.

NARRATIVE QUESTION EXAMPLE:

Ms. Roberts, please tell the court about the events that contributed to your decision to sue the county.

NARRATIVE ANSWER:

At times, the witness's answer to a direct question may go beyond the facts asked for by the question asked. Such answers are also subject to objection on the ground of narration.

c. **SCOPE OF WITNESS EXAMINATION**

Direct examination may cover all facts relevant to the case of which the witness has first-hand knowledge.

d. **CHARACTER**

For purposes of this mock trial, evidence about the character of a party may not be introduced unless the person's character is an issue in the case.

Methods of Proving Character

Section 90.405

1. Reputation - When evidence of the character of a person or of a trait of his character is admissible, proof may be made by testimony about his reputation.

2. Specific Instances of Conduct - When character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may be made of specific instances of his conduct.

e. **REFRESHING RECOLLECTION**

When a witness uses a writing or other item to refresh his memory while testifying, an adverse party is entitled to have such writing or other item produced at the hearing to inspect it, to cross-examine the witness thereon, and to introduce it, or in the case of writing, to introduce those portions which relate to the testimony of the witness, in evidence.

2. Cross-examination/Questioning
(questioning of the opposing side's witnesses)

Cross-examination **should** involve leading questions. In fact, it is customary to present a witness with a proposition and ask the witness to either agree or disagree. Thus, good cross-examination calls only for a yes or no answer. Some examples might be as follows:

> Mr. Roberts, in direct examination you testified that litigation was very stressful for you, correct? In fact you were so stressed that you did work at home or called in sick. Isn't this true?
>
> As an assistant district attorney, you knew that trying only three cases while settling 75 cases was not a job performance your supervisor would rate highly, didn't you?
>
> Thus given the stress you felt, your poor attendance at work and poor job performance, it was not unusual for your supervisor to transfer you to another Bureau, was it?

Form of Questions:

Leading questions are permissible on cross-examination. Questions tending to evoke a narrative answer should be avoided.

a. **SCOPE OF WITNESS EXAMINATION**

Cross-examination is not limited. Attorneys may ask questions of a particular witness that relate to matters brought out by the opposing side on direct examination of that witness, matters relating to the credibility of the witness, and additional matters otherwise admissible, that were not covered on direct examination.

b. **IMPEACHMENT**

On cross-examination, the attorney may want to show the court that the witness should not be believed. A witness's credibility may be impeached by showing evidence of the witness's character and conduct, prior convictions, and prior inconsistent statements. If the witness testifies differently from the information in their sworn affidavit, it may then be necessary to "impeach" the witness. That is, the attorney will want to show that the witness previously said something which contradicts the testimony on the stand.

IMPEACHMENT PROCEDURE

Impeachment may be done by comparing what a witness says on the witness stand at trial to what is contained in the witness's affidavit. By pointing out the differences between what a witness now says and what the witness's affidavit says, the attorney shows that the witness has contradicted himself or herself.

Who May Impeach?

Any party, including the party calling the witness, may attack the credibility of a witness by:

1. Introducing statements of the witness which are inconsistent with his present testimony.
2. Showing that the witness is biased.
3. Attacking the character of the witness in accordance with the state mock trial competition rules of evidence and procedure.
4. Showing a defect of capacity, ability, or opportunity in the witness to observe, remember, or recount the matters about which he testified.
5. Proof by other witnesses that material facts are not as testified to by the witness being impeached.

Section 90.610 Conviction of Certain Crimes as Impeachment

1. A party may attack the credibility of any witness, including an accused, by evidence that the witness has been convicted of a crime if the crime was punishable by death or imprisonment in excess of 1 year under the law under which he was convicted, or if the crime involved dishonesty or a false statement regardless of the punishment, with the following exceptions:
   A) Evidence of any such conviction is inadmissible in a civil trial if it is so remote in time as to have no bearing on the present character of the witness.
   B) Evidence of juvenile adjudications are inadmissible under this subsection.

Section 90.614 Prior Statements of Witness

1. When witness is examined concerning his prior written statement or concerning an oral statement that has been reduced to writing, the court, on motion of the adverse party, shall order the statement to be shown to the witness or its contents disclosed to him.

2. Extrinsic evidence of a prior inconsistent statement by a witness is inadmissible unless the witness is first afforded an opportunity to explain or deny the prior statement and the opposing party is afforded an opportunity to interrogate him on it, or the interests of justice otherwise require. If a witness denies making or does not distinctly admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible. This subsection is not applicable to admissions of a party-opponent.

3. <u>Re-direct and re-cross examination/Questioning</u>

   If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to "save" the witness's truth-telling image in the eyes of the court. Re-direct examination is limited to issues raised by the

attorney on cross-examination. Re-cross examination follows re-direct examination but is limited to the issues raised on re-direct only and should avoid repetition.

Note: The presiding judge may exercise reasonable control over questioning so as to make questioning effective to ascertain truth, avoid needless waste of time, and protect witnesses from harassment.

B. **STANDARD OBJECTIONS ON DIRECT AND CROSS EXAMINATION**

An attorney can object any time the opposing attorneys have violated the rules of evidence. The attorney wishing to object should stand up and do so at the time of the violation. When an objection is made, the judge may ask the reason for it. Then the judge may turn to the attorney whose question or action is being objected to, and that attorney usually will have a chance to explain why the objection should not be accepted by the judge. The judge will then decide whether a question or answer must be discarded because it has violated a rule of evidence or whether to allow the question or answer to be considered as evidence. The legal term "objection sustained" means that the judge agrees with the objection and excludes the testimony or item objected to. The legal term "objection overruled" means that the judge disagrees with the objection and allows the testimony or item to be considered as evidence.

1. Irrelevant Evidence: "I object, your honor. This testimony is irrelevant to the facts of this case."

2. Leading Questions: "Objection. Counsel is leading the witness." Remember, this is only objectionable when done on direct examination (Ref. Section A)

3. Narrative Questions and Answers: may be objectionable (ref. Section A1.b).

4. Improper Character Testimony:

   a. "Objection. The witness's character or reputation has not been put in issue.

b. "Objection. Only the witness's reputation/character for truthfulness is at issue here."

5. Hearsay: "Objection. Counsel's question/the witness's answer is based on hearsay." If the witness makes a hearsay statement, the attorney should also say, "and I ask that the statement be stricken from the record."

6. Opinion: "Objection. Counsel is asking the witness to give an opinion.

7. Lack of Personal Knowledge: "Objection. The witness has no personal knowledge that would enable him to answer this question."

8. Lack of Proper Predicate: Exhibits will not be admitted into evidence until they have been identified and shown to be authentic (unless identification and/or authenticity have been stipulated). Even after proper predicate has been laid, the exhibits may still be objectionable due to relevance, hearsay, etc.

9. Ambiguous Questions: An attorney shall not ask questions that are capable of being understood in two or more possible ways.

10. Non-responsive Answer: A witness's answer is objectionable if it fails to respond to the question asked.

11. Argumentative Question: An attorney shall not ask a question which asks the witness to agree to a conclusion drawn by the questioner without eliciting testimony as to new facts. However, the Court may, in its discretion, allow limited use of argumentative questions on cross-examination.

12. **Unfair Extrapolation/Beyond the Scope of the Statement of Facts**
Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting an unfair extrapolation. Unfair extrapolations are best attacked through impeachment and closing arguments and

are to be dealt with in the course of the trial. A fair extrapolation is one that is neutral.

Note: Fair extrapolations may be allowed, provided reasonable inference may be made from the witness's statement. If, in DIRECT examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection Outside the Scope of the Problem. If in CROSS examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness's statement or affidavit and does not materially affect the witness' testimony.

13. Objections Not Recognized in This Jurisdiction: An objection which is not contained in these materials shall not be considered by the Court. However, if counsel responding to the objection does not point out to the judge the application of this rule, the Court may exercise its discretion in considering such objection.

NOTE: **Attorneys should stand during objections, examinations, and statements. No objections should be made during opening/closing statements but afterwards the attorneys may indicate what the objection would have been. The opposing counsel should raise his/her hand to be recognized by the judge and may say, "If I had been permitted to object during closing arguments, I would have objected to the opposing team's statement that ___ ____" The presiding judge will not rule on this objection individually and no rebuttal from the opposing team will be heard.**

B-1 Opinions of Witnesses

a. EXPERT OPINION

Section 90.702 Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify about it in the form of an opinion; however, the opinion is admissible only if it can be applied to evidence at trial.

Section 90.703 Opinions on Ultimate Issue

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it included an ultimate issue to be decided by the trier of fact.

Section 90.704 Basis of Opinion Testimony by Experts

The facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, him at or before the trial. If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence.

EXPERT OPINION (ADDITIONAL INFORMATION)

An expert witness shall not express an opinion as to the guilt or innocence of the accused.

b. LAY OPINION

Section 90.701 Opinion Testimony of Lay Witnesses

If a witness is not testifying as an expert, his testimony about what he perceived may be in the form of inference and opinion when:

1) The witness cannot readily, and with equal accuracy and adequacy, communicate what he has perceived to the trier of fact without testifying in terms of inferences or opinions and his use of inferences or opinions will not mislead the trier of fact to the prejudice of the objecting party; and

2) The opinions and inferences do not require a special knowledge, skill, experience, or training.

LAY OPINION (ADDITIONAL INFORMATION)

All witnesses may offer opinions based on the common experience of lay persons in the community and of which the witnesses have first-hand knowledge. A lay opinion may also be obtained. For example, Sandy Yu, as the personnel director, would know of other complaints of sexual harassment in the office and any formal reprimands, even though he is not an expert in sexual harassment. They may be asked questions within that range of experience. No witness, not even an expert, may give an opinion about how the case should be decided.

The cross-examination of opinions proceeds much like the cross-examination of any witness. Questions, as indicated above, may be based upon the prior statement of the witness. Inconsistencies may be shown. In addition, the witness may be asked whether he or she has been employed by any party, to show bias or interest. Or a witness giving an opinion may be asked the limits of certainty in that opinion, as follows:

> Dr. Isaacs, please read this portion of your sworn statement to the court.

"I have studied the records of this case, and have conducted two one-hour interviews with Elyse Roberts on March 29 and 31st. In those interviews, she described to me her family history, her work environment, the actions of her co-workers and supervisor and her resulting feelings."

> This is your statement, is it not, Dr. Isaacs? Ms. Roberts selected you because of your expertise in sexual harassment in the workplace, correct? During your two hour interview you were only concerned with evaluating Ms. Roberts' working environment and not other psychological factors that may have caused her problems. Thus you really can't say that Ms. Roberts' difficulty on the job

was only caused by the actions of Mr. Murphy, can you?

The point of these questions is not to discredit the witness. Rather, the objective is simply to treat the witness as a responsible professional who will acknowledge the limits of her or his expertise and testimony. If the witness refuses to acknowledge those limits, the witness then is discredited.

It is always important in cross-examination to avoid arguing with the witness. It is particularly important with an expert. Thus, the cross-examination should be carefully constructed to call only for facts or to draw upon statements the witness has already made.

c. LACK OF PERSONAL KNOWLEDGE

A witness may not testify to any matter of which the witness has no personal knowledge. The legal term for testimony of which the witness has no personal knowledge is "incompetent."

B-2. Relevance of Testimony and Physical Objects

Generally, only relevant testimony may be presented. Relevant evidence is physical evidence and testimony that makes a fact which is important to the case more or less probable than the fact would be without the evidence. However, if the relevant evidence is unfairly prejudicial, may confuse the issues, or is a waste of time, it may be excluded by the court. Such relevant but excludable evidence may be testimony, physical evidence or demonstrations that have no direct bearing on the issues of the case, or do not make the issues clearer.

INTRODUCTION OF NON-DOCUMENTS, EXHIBITS, ITEMS AND OTHER PHYSICAL OBJECTS INTO EVIDENCE

There is a special procedure for introducing physical evidence during a trial. The physical evidence must be relevant to the case, and the attorney must be prepared to defend its use on that basis. Below are the basic steps to use

when introducing a physical object or document for **identification and/or use as evidence.**

a. Show exhibit and have it marked by the judge. "Your Honor, I ask that this____ be marked for identification as Plaintiff's/Defendant's Exhibit No. 1."

b. Show the exhibit to opposing counsel for possible objection.

c. Ask the witness to identify the exhibit. "I now hand you what is marked as Exhibit No. 1. Do you recognize this document?"

d. At this point the attorney may proceed to ask the witness a series of questions about the exhibit.

e. If the attorney wishes to place the document into evidence, say, "Your Honor, I offer this ____ marked as Plaintiff's/Defendant's Exhibit No. 1 into evidence and ask the Court to so admit it."

Court: "Is there any objection?"

Opposing Counsel: "No, your Honor." or "Yes, your Honor." (then state objection).

Court: "Plaintiff's/Defendant's Exhibit No. 1 is (is not) admitted."

NOTE: A witness may be asked questions about his/her statement without its introduction into evidence; but to read from it or submit it to the judge, it must first be admitted into evidence.

B-3 Hearsay and Exceptions to this Ruling

a. What is Hearsay?

Hearsay evidence is normally excluded from a trial because it is deemed untrustworthy. "Hearsay" is a statement other than one made by the witness testifying at the trial, offered in evidence to prove that the matter asserted in the statement is true. An example of hearsay is a witness testifying that he heard another person saying something about the facts in the case. The reason that hearsay is untrustworthy is because the opposing side has no way of testing the credibility of the out-of-court statement or the person who supposedly made the statement. Thus, for example, the following questions would be objectionable as "hearsay" if you are trying to prove that the color of the door was red:

Mr. Edwards what color did Bob say the door was?

This is HEARSAY. Mr. Edwards is using Bob's statement for him to prove the color of the door. Instead, Bob or someone who saw the door needs to be called to testify as to the color of the door.

b. Reasons for Prohibiting Hearsay

Our legal system is designed to promote the discovery of truth in a fair way. One way it seeks to accomplish this goal is by ensuring that the evidence presented in court is "reliable"; that is, we can be fairly certain the evidence is true. Hearsay evidence is said to be "unreliable" for four reasons:

(1) The hearsay statement might be distorted or misinterpreted by the witness relating it in court;

(2) The hearsay statement is not made in court and is not made under oath.

(3) The hearsay statement is not made in court, and the person who made it cannot be observed by the judge or jury (this is important because the judge or jury should be allowed to observe a witness's behavior and evaluate his/her credibility);

(4) The hearsay statement is not made in court and the person who made it cannot be challenged by cross-examination.

C. When can hearsay evidence by admitted?

Although hearsay is generally not admissible, there are certain out-of-court statements which are treated as not being hearsay, and there are out-of-court statements that are allowed into evidence as exceptions to the rule prohibiting hearsay.

Statements which are not hearsay are (1)prior statements made by the witness himself and (2)admissions made by a party opponent.

Exceptions

Hearsay is not admissible, except as provided by these rules. For purposes of this mock trial, the following exceptions to the hearsay rule will be allowed; even though the declarant is available as a witness.

(1) Spontaneous Statement
A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, except when such statement is made under circumstances that indicate its lack of trustworthiness.

(2) Excited Utterance A statement or excited utterance relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Medical Statements. Statements made for the purpose of medical diagnosis or treatment by a person seeking the diagnosis, or made by an individual who has knowledge of the facts and is legally responsible for the person who is unable to communicate the facts, which statements describe medical history, past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof, insofar as reasonably pertinent to diagnosis or treatment.

(4) Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made by the witness when the matter was fresh in his memory and to reflect that knowledge correctly. A party may read into evidence a memorandum or record when it is admitted, but no such memorandum or record is admissible as an exhibit unless offered by an adverse party.

(5) Records of a Regularly Conducted Activity

a) A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinion, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity and if it was the regular practice of that business activity to make such memorandum, report, record, or data compilation, all as shown by testimony of the custodian or other qualified witness, unless the sources of information or other circumstances show lack of trustworthiness. The term "business" as used in this paragraph includes a business, institution, association, profession, occupation, and calling for every kind, whether or not conducted for profit.

b) No evidence in the form of an opinion or diagnosis is admissible under paragraph (a) unless such opinion or diagnosis would otherwise be admissible if the person whose opinion is recorded were to testify to the opinion directly.

(6) Learned Treatises. To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in public treatises, periodicals or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness, or by other expert testimony, or by judicial notice.

(7) Then Existing Mental, Emotional or Physical Condition

a) A statement of the declarant's then existing state of mind, emotion, or physical sensation, including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health, when such evidence is offered to:

1. Prove the declarant's state of mind, emotion, or physical sensation at that time or at nay other time when such state is an issue in the action.

2. Prove or explain acts of subsequent conduct of the declarant.

b) However, this subsection does not make admissible:

1. An after-the-fact statement of memory or belief to prove the fact remembered or believed, unless such a statement relates to the execution, revocation, identification, or terms of the declarant's will.

2. A statement made under circumstances that indicate its lack of trustworthiness.

C. **TRIAL MOTIONS** **NO TRIAL MOTIONS ARE ALLOWED,**

EXAMPLES

For mock trial purposes, no motions are permitted except as mentioned above. Examples, include motions for a directed verdict, dismissal, or **acquittal**, etc.

(Neither shall a motion in **limine** or a motion to sequester witnesses be used during the competition).

EXCEPTION

* **Motion for Recess may only be allowed in emergency situations.**

D. ATTORNEY DEMEANOR SEE CODE OF ETHICAL CONDUCT

NOTE: PLEASE REFER TO OFFICIAL CASE MATERIALS FOR ANY SPECIFIC ADDITIONS RELATIVE TO THIS TRIAL.

EXPLANATION OF THE PERFORMANCE RATINGS USED ON THE SCORESHEET

Florida High School Mock Trial Competition

Individual participants will be rated on a scale of 1-10 speaker points (10 being the highest), according to their roles in the trial. Using the following evaluation criteria chart, the scoring judge will rate the performance of the two teams in the categories on the scoresheet. Each category is to be evaluated separately. Do NOT give fractional points. Legal merits of the case should not be considered in the performance evaluation.

The scoring judges are scoring INDIVIDUAL PERFORMANCE in each speaker category and TEAM PERFORMANCE in the Team Performance and Ethical Conduct boxes. Award 1-10 points to each team in the areas of team performance and ethical conduct as well as the individual presentation categories. Each scoring judge should consider "5" as the average team award, with reductions made for team penalties and additions for outstanding team performance. Team points for ethical conduct should be awarded based on the participants adherence to the Code of Ethical Conduct (Please review carefully before scoring this category).

POINT(S)	PERFORMANCE	CRITERIA FOR EVALUATING STUDENT PERFORMANCE
1-2	Not Effective	Unsure of self, illogical, uninformed, not prepared, speaks incoherently, definitely ineffective in communication.
3-4	Fair	*Minimally* informed and prepared. Performance is *passable*, but lacks depth in terms of knowledge of task and materials. Communications lack clarity and conviction.
5-6	Good	Good, solid, but less than spectacular performance. Can perform outside the script but with less confidence than when using script. Logic and organization are adequate, but not outstanding. Grasps major aspects of the case, but does not convey mastery of same. Communications are clear and understandable, but could be stronger in fluency and persuasiveness.
7-8	Excellent	Fluent, persuasive, clear, and understandable. Organizes materials and thoughts well and exhibits mastery of the case and materials.
9-10	Outstanding	Superior in qualities listed for 7-8 points' performance. Thinks well on feet, is logical, keeps poise under duress. Can sort-out essential from the nonessential and use time effectively to accomplish major objectives. Demonstrates the unique ability to utilize all resources to emphasize vital points of the trial.

The team with the highest points from any one scoring judge wins the vote from that scoring judge. The presiding judge will issue a mandatory performance vote, but no points, for each round. Judges are reminded to sign the scoresheet. Any errors in ADDITION will be corrected by scoreroom staff. Scoring judges should also vote for one MOST EFFECTIVE ATTORNEY and MOST EFFECTIVE WITNESS per competition round.

PLEASE DO NOT TIE TEAMS IN ANY ROUND.

Florida High School Mock Trial Competition

PRESIDING JUDGE VOTE

*Prosecution:*_____ *Defense:*_____
(Team Code) *(Team Code)*

*Round#*_____

Please make your decision, offer some written comments, and hand in this scoresheet to the Timekeeper as soon as possible. Thank you for participating.

I. Performance Evaluation -MANDATORY

Performance Decision: In my opinion the better mock trial performance was shown by

the PROSECUTION / DEFENSE (Circle One).

May be based on whether team members were courteous, followed rules, observed general courtroom decorum and spoke clearly and succinctly. Also considered will be whether all team members were involved in presentation of the case, quality of presentations and whether time limitations were met.

Note: Do not announce your performance decision.

II. Legal Evaluation

Provide a legal evaluation of the strengths and weaknesses of their arguments based on case material provided.

_____
Judge's Signature *Date*

Score Summary Sheet
1997 Mock Trial Competition

School:_____

Code:_____

Round One:	Votes	Scores
Judge One:		
Judge Two:		
Presiding:		
TOTAL		

Round Two:	Votes	Scores
Judge One:		
Judge Two:		
Presiding:		
TOTAL		

Round Three:	Votes	Scores
Judge One:		
Judge Two:		
Presiding:		
TOTAL		

Round Four:	Votes	Scores
Judge One:		
Judge Two:		
Presiding:		
TOTAL		

TOTAL VOTES:_____

TOTAL POINTS:_____

RANKING:_____

FLORIDA HIGH SCHOOL MOCK TRIAL COMPETITION

MOST EFFECTIVE ATTORNEY FORM
(Mandatory)

This form is to be completed by the **Scoring Judges**

_____
Date of Competition Round

_____
Enter Team Code

_____
Round

ATTORNEY

I wish to award the following team member the title of
MOST EFFECTIVE ATTORNEY
For this round:

_____
Name of Team Member from Team Roster

Prosecution or Defense Attorney
(Circle One)

SIGNATURES OF SCORING JUDGE FOR THIS ROUND: _____

Please turn this form in with the Scoresheet.

FLORIDA HIGH SCHOOL MOCK TRIAL COMPETITION

*MOST EFFECTIVE **WITNESS** FORM*

(Mandatory)

This form is to be completed by the **Scoring Judges**

_____
Date of Competition Round

_____
Enter Team Code

_____
Round

WITNESS

I wish to award the following team member the title of
MOST EFFECTIVE WITNESS
For this round:

_____
Name of Team Member from Team Roster

Prosecution or Defense Witness
(Circle One)

SIGNATURES OF SCORING JUDGE FOR THIS ROUND: _____

Please turn this form in with the Scoresheet.

Code of Ethical Conduct

for Participants in the

Florida High School Mock Trial Competition

The purpose of the Florida High School Mock Trial Competition is to stimulate and encourage a deeper understanding and appreciation of the American legal system. This purpose is accomplished by providing students the opportunity to participate actively in the learning process. The education of young people is the primary goal of the mock trial program. Healthy competition helps to achieve this goal. Other important objectives include: improving proficiency in speaking, listening, reading, and reasoning skills; promoting effective communication and cooperation between the educational and legal communities; providing an opportunity to compete in an academic setting; and promoting tolerance, professionalism and cooperation among young people of diverse interests and abilities.

As a means of diligent application of the Florida High School Mock Trial Competition's Rules and Competition, the Mock Trial Advisory/Policy Committee has adopted the following Code of Ethical Conduct for all participants.

1 Team members promise to compete with the highest standards of deportment, showing respect for their fellow team members, opponents, judges, evaluators, attorney coaches, teacher coaches and mock trial personnel. All competitors will focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly, and with the utmost civility. Members will avoid all tactics they know are wrong or in violation of the Rules, including the use of unfair extrapolations. Members will not willfully violate the Rules of the competition in spirit or in practice.

2 Teacher Coaches agree to focus attention on the educational value of the Mock Trial Competition. They shall discourage willful violations of the Rules. Teachers will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the competition's Rules and this Code of Ethical Conduct.

3 Attorney Coaches agree to uphold the highest standards of the legal profession and will zealously encourage fair play. They will promote conduct and decorum in accordance with the competition's Rules and this Code of Ethical Conduct. Attorney Coaches are reminded that they are in a position of authority and thus serve as positive role models for the students.

4. All participants (including observers) are bound by all sections of this Code and agree to abide by the provisions. Teams are responsible for insuring that all observers are aware of the Code. Students, teacher coaches, and attorney coaches will be required to sign a copy of this Code. This signature will serve as evidence of knowledge and agreement to the provisions of the Code. Teams will receive scores on ethical conduct during each round.

5 Staff and mock trial advisory committee members agree to uphold the rules and procedures of the Florida High School Mock Trial Competition while promoting ethical conduct and the educational values of the program.

Signatures of the Team from

_____

NAME OF TEAM

We, the undersigned, agree to uphold the Code of Ethical Conduct in Rounds of the Florida High School Mock Trial Competition:

TEAM MEMBERS:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

TEAM COACH(ES):

_____

_____

ATTORNEY COACH(ES)
(please insert name & Attorney Number)

_____

_____

_____

_____

_____

_____

_____

TIMEKEEPERS:

_____

_____

Legal Professionalism Award Ballot
1997 High School Mock Trial Competition

Teachers: Please complete this ballot as your official recommendation for the Legal Professionalism Award. Only one entry per school will be accepted. Please return this ballot by 3:00 p.m. on Friday. A box will be provided. You may wish to discuss with your students their feelings about the professionalism, spirit, and ethical conduct of other teams to aid in your decision.

Recommendation #1:_____

Comments:

Recommendation #2:_____

Comments:

Submitted By:_____

School:_____

District:_____

Signature:_____

Two awards will be presented.

COMPLAINT FORM

(Please Print)

Date:_____

Person Lodging Dispute/Complaint:_____

Affiliated With:_____ **(Enter Team Code Only)**

Nature of Dispute/Complaint:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

NOTE: This form may be used to inform the Mock Trial Coordinator and Advisory Committee of any disputes or recommendations relating to the competition including complaints regarding judges. Please be specific regarding the nature of the dispute. This form in **no way** replaces the dispute resolution process as outlined in the rules.

_____
Signature

RETURN TO BOX AT REGISTRATION DESK

TEAM DISPUTE FORM

Date:_____ Round (*Circle one*) 1 2 3 4 Final

Prosecution:_____ Defense:_____
(Team Code) (Team Code)

TEAM LODGING DISPUTE:_____ (Enter Team Code)

Grounds for Dispute:_____
_____
_____
_____

Initials of Team Spokesperson:____ Time Dispute presented to Presiding Judge:_____

Hearing decision of Presiding Judge (*Circle one*): **GRANT DENY** Initials of Judge:_____

Reason(s) for Denying Hearing or Response of Opposing Team:_____
_____
_____
_____

Initials of Opposing Team's Spokesperson:_____

Presiding Judge's Notes from Hearing:_____
_____
_____
_____

Decision of Presiding Judge Regarding Dispute (*circle one*): **Refer to Panel Not Refer to Panel**

Reason(s) for Presiding Judge's Decision:_____
_____
_____
_____

This form must be returned to the trial coordinator along with the scoresheets of the Scoring Judges and the ballot of the Presiding Judge.

_____
Signature of Presiding Judge

TEAM ROSTER
Florida High School Mock Trial Competition

This sheet should be completed in triplicate by each Prosecution and Defense team. Copies are to be made available to the judging panel (3 copies) before each round. The team code can be filled in after registration at the competition site.

Do not place team or attorney/teacher-coach identifying information on the forms used in competition rounds.

Please print or type

_____

Team Code

In this round, students listed on this roster represent the:
(Circle One)

PROSECUTION DEFENSE

Names of Team Attorneys

_____
_____
_____

Identify Tasks to be Presented

_____
_____
_____

Names of Team Witnesses

_____
_____
_____

Identify Roles to be Performed

_____
_____
_____

Florida High School Mock Trial Competition
Official Master Score Sheet

Round_____

_____ V. _____

	Prosecution	Defense	Votes
Judge 1	_____	_____	P or D
Judge 2	_____	_____	P or D
Presiding			P or D
TOTAL	_____	_____	

PROSECUTION: TOTAL VOTES _____ TOTAL POINTS _____

DEFENSE: TOTAL VOTES _____ TOTAL POINTS _____

Oath of Admission to The Florida Bar

The general principles which should ever control the lawyer in the practice of the legal profession are clearly set forth in the following oath of admission to the Bar, which the lawyer is sworn on admission to obey and for the willful violation to which disbarment may be had.

"I do solemnly swear:

"I will support the Constitution of the United States and the Constitution of the State of Florida;

"I will maintain the respect due to courts of justice and judicial officers;

"I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

"I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

"I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with their business except from them or with their knowledge and approval;

"I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

"I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice. So help me God."